Author:
Huang, Chia-Hung

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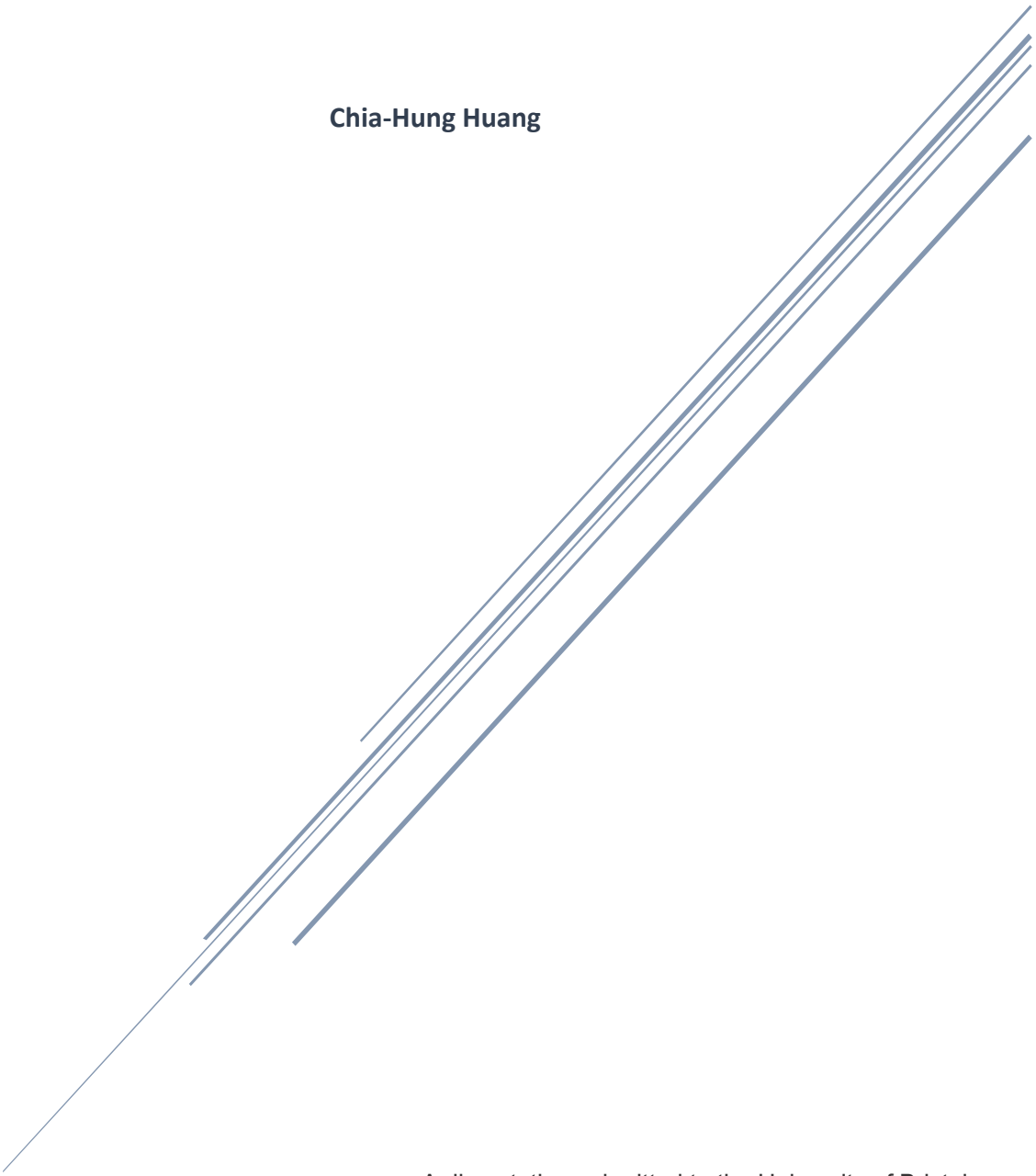
A POLITICAL PHILOSOPHICAL ACCOUNT OF SECESSION

On the Right and Principles of Secession

Chia-Hung Huang



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Author's declaration

I declare that the work in this dissertation was carried out in accordance with the requirements of the University's Regulations and Code of Practice for Research Degree Programmes and that it has not been submitted for any other academic award. Except where indicated by specific reference in the text, the work is the candidate's own work. Work done in collaboration with, or with the assistance of, others, is indicated as such. Any views expressed in the dissertation are those of the author.

SIGNED:

DATE: 13/11/2019

Abstract

Secession is an ongoing, urgent and worldwide issue. Scotland appears to be proposing a second independence referendum after Brexit; Quebec demanded two independence referenda and even though both votes went (narrowly) against secession, ultimately forced the Canadian government to legislate the Clarity Act, regulating how a province can be sovereignly independent. Secessionist conflicts in Palestine, Kurdistan, and Nagorno-Karabakh have led to tens of thousands of deaths toll in recent decades. China controls Tibet; yet the 'Tibetan Government in Exile' in Dharamsala, India sees that governance as illegitimate military occupation. Secessionism also arose out of dissatisfaction with the unfair distribution of resources in western Australia in the twentieth century, and there are many other examples that could be given. Since secession normally produces political instability or violent conflict, both of which affect not only the domestic but also the global order, many disciplines hope to address the issue. Political philosophy is no exception, and a number of authors have sought to clarify how we should think about secession (among other issues), based upon what normative bases a claim to secede ought to be granted.

I propose a political philosophical account of justified secession in order to tackle the thorny conceptual issue of what a right of secession amounts to, given that the state normally forbids or restricts secession by appeal to its legitimate jurisdiction, whereas secessionists and minorities advocate a primary interest in self-determination and ask for more permissive conditions on secession. The following core claim threads through my dissertation: even though (1) the current boundaries of (state) territory are a result of historical contingency,

and (2) qualified claimants to secession are entitled to the same moral standing as the host states in securing their territorial interests, (3) both agents (i.e. secessionists and states) should limit their rights to propose or prohibit secession, because their rights to territories are justified provisionally and conditionally. The first proposition reveals a certain understanding of the modern state system, according to which we should recognise its contingent, arbitrary composition (i.e. where the boundaries are drawn and what particular group is subject to what state) and unjust genesis as a significant difficulty that the extant states as rulers ought to at least attempt to overcome. That is to say, states are obliged to mitigate the impact of their own unjust genesis and to convince their subjects to accept the arbitrary composition (i.e. the fact that they happen to be subject to a particular state) in order to justify their rights to particular territories (i.e. territorial rights). By 'convince', I mean that the state should ameliorate the arbitrariness with moral values in order to help its subjects tolerate that problematic feature. As suggested by Margaret Moore and Anna Stilz, on whose work I draw, these values are basic justice, rights of occupancy and collective self-determination.

The same historical contingency also shapes people's rights to collective self-determination. First, if the composition of state is a matter of historical contingency, then who becomes the advantaged group(s) dominating a particular state or what group may claim secession is likewise affected by that same contingency. Second, while a dominant group in a state often prioritises their corporate (territorial) interests with respect to those of other subgroups, the right to territorial integrity or the state's moral standing in terms of non-interference in domestic affairs usually exacerbates partiality or bias in favour of the dominant group. In such a scenario, the collective self-determination of the state reduces, wrongfully, to the self-

determination of the ruling group. However, thirdly, this implies another account of territorial rights or state territory: that is, the state derives its territorial rights by securing the collective self-determination of all self-determining peoples within its territory. By self-determining people, according to Moore, we refer to a certain kind of territorially concentrated sub-state group, able to form a government, and holding a shared political (group) identity and history of cooperation. Provided that the state's rights to territory is constituted by the territorial rights of its self-determining peoples, the state should be conceived as an entity in which several proto-states/self-determining peoples are potentially embedded. As a result, we should deem such a subgroup to be a qualified claimant to secession and so the group is entitled to the moral standing (same as the host state) in protecting their territorial interests. Connecting to the foregoing, statist account, I shall propose my dualistic account of territorial rights, accommodating and recognising the territorial interests of self-determining people.

The achievement of a state in securing basic justice, rights of occupancy and collective self-determination, or the identification of qualified claimant to secession, does not constitute the whole picture of the right to secede. I shall further argue that my dualistic account of territorial rights is justified if and only if the rights-holders (namely the state and self-determining people) are also committed to the establishment of a global political authority. This reflects the Kantian idea of permissive laws that, firstly, states' territorial rights over particular populations and territories should be taken as unilateral acquisitions and settlement from the viewpoint of outsiders, so that there is a case for a just global authority to be erected to address such unilateralism. However, secondly, before such an authority is erected, we should still grant unilateral jurisdiction over territory, provided that such recognition is necessary to bring about that global authority or rightful conditions around the

world. Besides, the new account of territorial rights can entail principles for justified secession, which articulate the circumstances in which a claim to consensual or unilateral secession is morally justified. It will be shown that the normative basis of justified secession, in addition to grave injustice, refers also to persistent alienation, while different degrees of that wrong make legitimate consensual or unilateral secession. Based upon these analyses, I propose that the right of secession, as a group right, should be redefined as the right of a subgroup to have an equal moral/legal standing when re-negotiating terms and conditions (for the protection of territorial rights) with the host state or any relevant agent. It thus consists in the remedial right to claim secession, the primary right to constitutional reform, and the primary right to erect a just global authority jointly with the extant, recognised states. A subgroup, however, can only propose unilateral secession as the remedy for grave injustice or serious violation of collective autonomy; it should also be endowed with the preceding primary rights for better protecting the territorial rights or group autonomy of its members.

In arguing for the core assertion and the proposal above, my dissertation is structured as follow. Chapters 1 & 2 undertake the preliminary work of my thesis, on which I shall proceed a literature of review of past normative theories of secession and the methodologies behind them. I shall explain that the idea of territorial rights should be the very foundation of secessionist theory and argue for the necessity of pre-institutional moral reasoning in theorising a right to secede. Chapters 3 & 4 develop my dualistic account of territorial rights as the basis of my proposal for justified secession. Chapter 5 proposes principles for justified secession, based upon the situation in which the state's hold of territorial rights is no longer justified. Chapter 6 sketches a new account of the right to secede based on the previous investigation and provides the justification of the right and some legal implications.

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Chapter 1: The Fundamental Structure

0. Preface

Political philosophy should take a view of justified causes for secession, through which the relevant agents may understand under what circumstances and based upon what values they should support or reject a claim to secede.[1] Such academic discipline is necessary to combat conceptual incoherence, status quo bias and might-is-right beliefs.[2] This account of justified secession is then comprised of *principles of secession* and *right(s) to secede* as the two pivotal products of my dissertation. Before articulating the content of the right and the principles, I set out a definition of secession as the fundamental structure of my thesis (in this chapter), exploring a basic framework and suggesting that most theories of secession should share this definition; and subsequently articulating (in Chapter 2) the methodological reasoning behind

[1] It is preliminary to clarify what secession and the state amount to respectively in my dissertation. First, according to Buchanan, the classic sense of secession should be distinguished from irredentist secession. The former refers to our general understanding of secession that 'a group in a portion of the territory of a state attempt to create a new state there; secessionists attempt to exit, leaving behind the original state in reduced form' whereas the latter though attempts to leave their host state and yet achieves it by merging the seceding land with a neighbouring state. My dissertation theorises only the justification of the classic sense of secession. Second, secessionists strive for building their own state but the state as a political concept is not unambiguous. According to Christopher Morris, modern states are 'distinctive territorial forms of political organisation that claim sovereignty over their realms and independence from other states.' This is also the account to which I subscribe. See Christopher W. Morris, *An Essay on the Modern State* (Cambridge: Cambridge University Press, 1998), pp. 45-46; Allen Buchanan, 'Secession,' Stanford Encyclopaedia of Philosophy, accessed 13 Nov. 2019, https://plato.stanford.edu/entries/secession/

[2] The account of political philosophy I follow is that proposed by Adam Swift: (1) a specific branch of moral philosophy aiming to justify what each politically relevant subject ought (and ought not) to do; by which (2) a political philosopher is committed to two essential tasks: *conceptual analysis* and *principle formation*. This way of doing political philosophy aims primarily at how we should think of a given issue, particularly that of organising or evaluating the relevant ideas in a reasonable manner. See Adam Swift, "Political Philosophy and Politics," in *What is politics: The activity and its study*, ed. Adrian Leftwich (Cambridge: Polity Press, 2004), 135-36. However, Guess holds a different view, suggesting that political philosophy should (1) begin with study of what politics actually is and what motivates each given political form; (2) focus on action and the contexts of action; (3) be historically located; (4) be applied like an art, rather than a science. See Raymond Geuss, *Philosophy and Real Politics* (New Jersey: Princeton University Press, 2008), 1-18.

my analysis. These two chapters pave the very foundational way for my account of justified secession.

A plausible account of territorial rights should be the normative basis of justified secession, because the account clarifies what rights to political territory relevant agents can hold. It thus conceives justified secession as a consequence of the so-called dualist justification: (1) the statist justification points out under what condition an existing state can legitimately hold territorial rights, including a right to prohibit secession; and (2) the secessionist justification specifies what a qualified claimant to secession could do (or the rights to which they are entitled) in response to such conditions. I shall also argue for three fundamental territorial concerns that form a bridge between the right of secession and territorial rights: (1) how do we counter the unjust genesis of states? (2) How do we evaluate competing, overlapping claims to the same swathe of territory? And (3) how do we reconcile the right of self-determination (which includes the right of secession) with the right to territorial integrity?

The chapter proceeds as follows. Section 1 assesses different normative theories of the right to secession, in which the competition between the primary right vs. the remedial right only camp is illustrated, and I conclude that a cogent account of territorial rights is helpful and necessary. Section 2, therefore, introduces the idea of territorial rights and explains how it addresses the problem of secession by identifying three fundamental territorial concerns. Section 3 then proposes my fundamental structure of justified secession, which I call the dualist justification.

1. A review of theories of secession

Normative theories of secession began with inquiry into the right to secession. According to David Copp, this right refers to a cluster of rights constituted by certain liberties, claim-rights and moral powers.[3] Claim-rights consist of (1) a claim against the host state that it should not interfere with the ability of a minority group to form a self-determining government or state; and (2) an obligation on the host state to respect the would-be state in the same way it respects other, existing states. A qualified claimant to secession has (3) the freedom to conduct an independence referendum, which again implies a right to be free from state interference. Finally, the rights-holder should possess (4) the powers to realise these foregoing claims and liberties i.e. they should be able to form a self-supporting state.

Three different schools of thought, and two rival accounts of the right to secede, can be seen in the literature. The competing accounts are the primary right and the remedial-right-only camps. By definition, the primary right account means that the exercise of the right is independent of severe injustice being inflicted on the group that wishes to secede, such as violation of basic human rights, and so can be exercised unilaterally, without the consent of government. This, of course, does not mean that secession can be proposed and permitted in any circumstances: different theories provide different criteria that must be met by the claimants and/or seceded states, and the forms that secession might take. This primary right account amounts to the notion that a claim to secede is justified in its own right. That is, the primary right to secede is justified because, for example, it protects our collective autonomy.

[3] David Copp, 'Democracy and Communal Self-Determination' in *The Morality of Nationalism*, ed. Robert McKim & Jeff McMahan (Oxford: Oxford University Press, 1997), pp. 278-279.

The plebiscitary theories and the ascriptivist theories all support the primary right account. The plebiscitary school of thought derives its name from its proposal to address secession or determine the boundaries of seceding territory through the application of majority rule. In other words, a state's territory should be occupied by inhabitants whose majority has expressed a desire to form their own state. The ascriptivist school of thought, which also align with the primary right account, propose to impose more constraints on the claimants to secession, ascribing distinct corporate features to the claimants in order for the group to be able to claim secession, such as requiring the members of the group to share some common substantive characters, such as culture. That is to say, in addition to a desire for self-determination, the ascriptivist theories confer the right of secession only on people who constitute a coherent group with a clear, common identity.

By contrast, the remedial-right-only camp argues that the right to secede can only be claimed if a corresponding primary right is violated. In a secessionist context, primary rights refers to basic human rights or our fundamental interest in subsistence. Were such a right to be violated seriously, the right of secession could be exercised as a means of preventing or resisting such a violation being inflicted by the host state. The right to secede is thus considered a remedy for egregious suffering and therefore, remedial only.

1.1. Plebiscitary theory

The most prominent plebiscitary theory is that of Christopher H. Wellman. He asks us to contemplate the transition from the Hobbesian 'state of nature' to civil society, and consider whether our right to political self-determination (which includes the right to secede) remains? In other words, does our support for state require us to give up the right to secede?

Generally, when a state succeeds in legitimating its political authority, it has the right to rule over its subjects and asks that they submit to its authority. Wellman argues that the legitimacy of such authority should be based on samaritanism, which asserts that the state's political coercion is necessary and justified in constraining the freedom of citizens only if, as in the story of good Samaritan, this is necessary to protect the peace and security of society. The moral function of upholding the state is to facilitate peace (rather than perpetual conflict, as in the state of nature), while also maintain most individual liberties. However, unlike Hobbes's absolutist account of state authority, Wellman's account by no means suggests that the state can impose more constraints on the subjects' liberty than the samaritan account requires. The argument runs as follows. First, a state cannot function if its boundaries are not defined. That is, the demand for jurisdiction over a certain territory is not merely a matter of historical contingency, but also a practical point. However, common jurisdiction still falls short of understanding how to exercise state authority legitimately. Following the samaritan account, second, the convenience and political stability achieved by clearly defining the boundaries of a state must benefit not only each subject individually, but also most of their fellow citizens. The state is justified in imposing the rule of law and coercing citizens into abandoning some of the liberties that originally existed in the state of nature in order to achieve political stability,

basic justice and (this particular regulated form of) personal autonomy. It is samaritan in virtue of the goods that the state can bring about; and the state in turn has a duty to benefit its subjects by realising those goods.[4] Nevertheless, thirdly, the duty to benefit cannot then require each citizen to relinquish their right to political self-determination, since exercising such a right would not disrupt the peace and security of society. Subjects are committed to giving up their rights only to the extent necessary to prevent social disorder. In other words, if the exercise of a given liberty (e.g. the right of secession) does not sabotage the peace and security of a society, the state has no right to deprive its citizens of such a freedom.

However, the final claim to the right of political self-determination can only be made if a kind of non-consequentialist account of political self-determination is advocated. One can contend, for instance, that such a right should not exist if the majority of members within a given society can achieve the greatest utility by revoking the right. To counter this, Wellman gives the following deontological reason for group autonomy.[5] He asks us to consider why democracy is valuable and why colonialism should be forbidden. It has been a prevailing idea that a democratic state or a democratic decision-making process ought to be supported, on the basis that each subject is entitled to an equal say in the construction of public affairs. Moreover, when a decision is made through such a procedure, we value and respect the result because the result should legitimately represent the common will. Valuing democracy thus amounts to a respect for self-determination and group autonomy. This holds true even if some undemocratic means may generate greater utility for the society. In terms of

[4] See Christopher H. Wellman, *A Theory of Secession: The Case for Political Self-Determination* (New York: Cambridge University Press, 2005), pp. 21-25.
[5] Wellman has explicitly claimed that his argument for the primary right to secede is conditional on valuing self-determination or group autonomy. See: *Ibid*., p. 38

colonialism, the same idea can be applied. It is believed that metropolitan states wrong the colonised, not merely because the resources of the colonies are exploited by them; the fundamental wrongness of colonisation is that it deprives the colonised populace of their self-determination and group autonomy.

Therefore, when group autonomy is grounded in the democracy argument and the fulfilment of such a value would not violate the very reason for upholding the state, Wellman concludes that the right to secede should be deemed to be a primary right, according to which '*any group may secede as long as it and its remainder state are large, wealthy, cohesive, and geographically contiguous enough to form a government that effectively performs the functions necessary to create a secure political environment*.'[6] In addition, the determination of territorial boundaries should follow a democratic procedure, which means ideally, individuals should be allowed to apply the majority rule to the drawing of state borders, as long as the samaritan account of state authority is respected. The paramount goal of the proposal is thus to 'create boundaries that are maximally consistent with the constituents' preferences.'[7]

However, Wellman's plebiscitary theory has great difficulty in justifying the eligibility of the electorate or the scope of electoral districts that would participate in such an independence referendum. This reflects the lack of theoretical resources available for settling territorial issues.[8] We value democracy and confer universal suffrage on each qualified voter because

[6] *Ibid*., pp.161-162.
[7] *Ibid*., p. 59.
[8] Amandine Catala attempts to address the territorial concern from the perspective of plebiscitary theory. However, her proposal is similar to Margaret Moore's account, which will be introduced in Chapter 3. See Amandine Catala, 'Secession and Annexation: The Case of Crimea,' *German Law Journal* 16, no. 3 (2015): 581-

the political decisions they vote upon affect them.[9] Thus, it seems that all citizens of the state have the right to vote on secession-related matters, because the outcome will have a huge impact on all citizens. However, this conclusion either contradicts our normal practice of nationwide participation in referenda by only taking place in the area hoping to secede, or only allowing those of a particular background (say, a particular ethnicity) to vote; or, if all normally eligible voters throughout the state are included in such a referendum, secession is likely to be voted down every time, since by definition secessionists are normally a minority group. Furthermore, people's will to political self-determination plus the samaritan argument for state authority are still not sufficient to determine the scope of either the electorate or the boundary of the would-be state. For instance, the boundary between England and Scotland appears to be clear and indisputable. However, this would be less clear if the majority population in Carlisle or the Lake District (say, 80%) were Scottish. It could be argued that this area is de facto part of Scotland, particularly if the majority of Scots living in Carlisle or the Lake District were also in favour of Scottish independence. Thus a paradox arises: on the one hand, political self-determination and the views of the populace are likely to be public knowledge, rendering a referendum redundant; yet on the other, if we accept that the boundary of a new state should surround a population of which the majority are pro-secession voters, such a boundary cannot be determined by a referendum.

These difficulties are both practical and theoretical. That is to say, despite Wellman's proposal that the primary right account can be justified (in light of the deontological reason for group autonomy and) under the condition that the secession proposed would not violate the

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[9] This account of democracy surely reflects two principles as to the constitution of the demos, namely the all-affected interest principle and the all-subjected principle.

seceding or seceded state's duty to benefit, such a justification only accounts for a claim to the reconfiguration of political authority referring to the political relations between the state and subjects. Given that the right to secede should also offer an account of the relationship between the state and the territory, or the claimant and their claimed land, the plebiscitary theories fall short of providing a complete account.

1.2. Ascriptivist theory

This account can be glossed as 'every nation[10] should have its own state'. Compared to the plebiscitary theories, here the idea of national self-determination, though advocating a primary right to secede, requires more qualifications and conditions to be met by the claimant of secession. This includes the requirement that the claimants exhibit some substantive, group features proposed by the theory. For example, David Miller defines a nation as a community (1) constituted by shared beliefs and mutual commitment; (2) extended in history; (3) active in character; (4) connected to a particular territory; and (5) distinguishable from other communities by its distinctive public culture.[11] Miller argues that a nation is entitled to the (*prima facie*) primary right to secede because there are good reasons for ensuring that a state's citizens reflect its national boundaries. Those reasons are as follows.

First, national identity is an important source of personal identity, significantly constituting the context of *individual living and well- being*. Denying or arbitrarily altering one's national

[10] Surely not every theorists term such a group as nation. 'People' is also preferable to indicate this group formed by some substantive group features more than the willingness of political self-determination. See also Margaret Canovan, *The People* (Cambridge: Polity Press, 2005); Benedict Anderson, *Imagined Communities* (London: Verso, 2006); Michel Seymour, 'On Redefining the Nation,' *The Monist* 82, no.3 (1999), pp. 411-445.
[11] David Miller, *On Nationality* (Oxford: Clarendon Press, 1995), p. 27.

identity can be taken as violating an important constituent of personal identity and consciousness. Secondly, nationality binds compatriots together and so creates *mutual trust, community and solidarity*, within which reciprocity can be enhanced. Co-nationals communicate with each other more easily than with non-members and public culture is a strong foundation of public and political practices, which are important parts of co-nationals' daily lives. As defined by Miller, (national) public culture refers to 'a set of ideas about the character of the community which also helps to fix responsibilities'.[12] This is to some extent a consequence of political debate and its manifestation relies on mass media. For instance, he points out that North Americans value individualism and self-reliance, whereas the Swedish people value social solidarity and equality. Thus, US society emphasises individual efforts contributing to social affairs and thus demands the protection of personal freedom. By contrast, Swedish society construes their membership obligations in terms of co-ordination and equal treatment, and so focuses on whether the social structure encourages co-operation and whether policies treat citizens fairly. Thirdly, Miller argues that public culture is objective in the sense that it is formed through critical and public debate among fellow nationals. That is to say, each national has an equal right to shape public culture. Since it is not determined arbitrarily, nor by an individual, we should not perceive it as subjective. It is thus plausible that some demands derived from national public cultures become *moral obligations*, which shows that nations are obligation-generating communities. Finally, as suggested by Moore, the argument of nationality is primarily normative rather than being self-interested.[13] Empirical evidence shows that political practices of states privilege certain nationalities while

[12] *Ibid*., p. 68.
[13] Margaret Moore, *The Ethics of Nationalism* (Oxford: Oxford University Press, 2001), pp. 32-35.

disadvantaging others (i.e. national minorities). For instance, stipulation of an official language is likely to benefit or privilege a specific nationality.

Therefore, co-nationals owe obligations to one another to protect or promote their shared beliefs, mutual commitment and national culture: their personal well-being or autonomy is conditioned by the development of their nationality. Nonetheless, a nation is not like a family in which everyone is familiar with each other. Because a nation is an immense and impersonal community, these obligations need to be discharged effectively, by force if necessary. A nation, therefore, strives naturally for political self-determination, aiming at acquiring sufficient institutional resource and political authority to discharge the national obligations. If a state comprises two or more nations, the dominant one may allocate most resource to its co-nationals and place unreasonable duties on weaker nations. Here, Miller argues that there is a prima facie case to assert the superiority of mono-national states, because single nationality enhances the function of the state. This account is necessary if a nation hopes to promote itself and achieve goals that demand the co-operation of citizens (such as creating a nuclear-free homeland or national health insurance). Voluntary cooperation presupposes mutual trust, which each member of a state or nation needs to uphold. Therefore, in terms of political performance, a nation is the best unit through which to complete the functions of state. Regarding national development, independent statehood satisfies the demand for national communities. As Miller says, 'there is a presumption here in favour of national sovereignty.'[14]

[14] Miller, *On Nationality*, p. 101.

Miller concludes that the right to secede is a (prima facie) primary right, because there is a presumption in favour of national sovereignty that entails his principle of nationality. For Miller, the principle asserts that national self-determination ought to be promoted whenever feasible. Current boundaries ought to be questioned if national self-determination within the boundary is denied by state authorities. Yet how does one understand a denial of national self-determination? Miller argues that, 'the problem of secession arises only in cases where an established state houses two or more groups with distinct and irreconcilable national identities.' [15] As such, at least two conditions should be satisfied if secession is to be considered: (1) there are two or more nations within a state and their national differences cannot be reconciled peacefully; (2) the secessionists offer a plausible territorial account of the land they want to occupy.[16] For example, the Kurds are a distinct nation and have lived in the mountainous areas of the southern Caucasus for centuries. However, at the beginning of the twentieth century, the Turkish authorities refused to recognise them as a nation and deprived them of many rights that would have protected Kurdish culture. This resulted in serious conflict between the Kurds and the Turkish government. Therefore, for Miller, a Kurdish claim to secession should be approved, as it meets his conditions. Ascriptivist theories such as Miller's, though following political self-determination, have the theoretical resources to address the territorial issues. That is, a nation is justified in building a state in the

[15] *Ibid*., p. 113.

[16] However, this does not imply that (unilateral) secession should be permitted whenever a state is in these circumstances. Firstly, if the national minorities that live either within the boundary of the seceding state or in the seceded territory, could prove that they would become more vulnerable after state-breaking, then secession ought to be denied, because it fails to resolve the matter. Secondly, the State Viability Proviso (i.e. that a new nation should be able to function as a state) should be satisfied. Moreover, Miller opposes secession proposed on the grounds that secessionists would make better use of resources in the seceding area. However, he also proposes that secession arising from national self- determination ought to be supported even if the seceding state will take over much resource from the original state.

geographical area that they consider manifesting the material and symbolic value of their nationality, but such a link between people and place must be verified.[17]

However, Miller's account of secession is not without flaws. First, 'nation' is often a contested idea because the claim to social or cultural homogeneity implicit in the principle of nationality provides an excuse to stress national, ethnic or religious differences. In a secessionist context, the principle appears to discourage mutual respect for pluralism and national diversity within a territory. The right of secession is not intended to disrupt social cohesion. Second, the idea of a 'nation' may disappoint secessionists, because either the secession proposed does not aim to protect or promote nationality, or the idea of nationality falls short of creating the territorial entitlements they desire. According to Stilz, nationalist settlement views conflate property with territory in a normative sense.[18] That is, even though settlement and related activities such as agriculture or mining change an area of land to a great extent, by which we may concede that a group 'owns' a piece of land through the labour they have expended upon it, there is still a difference between *property* and *territory*. Conflating the two notions would be very dangerous. For example, immigrants are likely to group together and form their communities based on their common culture, but that is not the same as that area of a host nation 'becoming' part of the country that those immigrants have left (although the idea that they have is often seen in the was such areas are known colloquially as 'Little China' or 'the Jewish quarter'). In such a case, if these immigrants claimed to secede, we would hesitate to grant it. Or, a nation might shape its land due to political or historical developments, blurring the distinctions between peoples or nations. Taking the Soviet Union as an example, a multi-

[17] David Miller, 'Territorial Rights: Concept and Justification', *Political Studies*, 60:2 (2012), pp. 252-268.
[18] Anna Stilz, "Nations, States and Territory," *Ethics* 121, no. 3 (April 2011): 572-601, pp. 576-78.

national state could form its territory with a single economic plan and political (Communist, in this case) approach, making it harder to distinguish different cultural practices, even though many nations may be included.

Finally, there is vagueness in terms of what exactly a claim to secede amounts to for Miller. The presumption of mono-national statehood seems to be derived from the (misleading) relationship between national self-determination and independent statehood, which takes the latter as the best political form for national interests. This is misleading, because the nationality principle still looks plausible even if we discard that mono-state presumption and rely only on the cause or value of national self-determination. That is to say, we can both appreciate the reasons for national self-determination articulated by Miller and restrict exercising of the right to independent statehood. Many existing, multinational states such as the UK or Canada have good development. Nevertheless, when the nationality principle firstly asks us to further the cause of national self-determination, and secondly considers the problem of secession to arise only if a state houses two or more distinct and irreconcilable national identities, Miller doesn't account for the normative basis of such irreconcilability, but gives examples such as different religions or conflicting understandings of common history. If the conflict between nations is the result of bias against one another, this certainly should not be recognised by a plausible account of the right to secede. Miller's proposal, unfortunately, leads us into moral hazard.

1.3. Remedial right only theory

In contrast to the primary right account, Allen Buchanan argues that the right to unilateral secession is justified if the host state violates the basic human rights of the claimant. Unilateral secession thereby should be taken as a last resort or remedy for redressing such as egregious moral wrong. Let me illustrate his argument.

First, Buchanan not only narrows the focus (correctly) to the right of unilateral secession, but also argues that any tenable account of the right to secede must be articulated by institutional moral reasoning, meaning that convincing reasons must be given for the recognition of relevant institutions. The term 'institutions', for Buchanan, refers not just to the host state's institutional scheme, but also international law, because secession is a geopolitical matter and demands international recognition. So understood, international law is viewed as a higher norm, governing any claim to secede. A justified account of the right, therefore, should not undermine the basic framework or core values of international law, but enhance and promote it. The aim of secession theories should firstly elaborate what moral values international law should uphold and then consider what kind of right to secede best coheres with these values. Such methodology is in contrast to that underlying the proceeding two theories (namely pre-institutional reasoning), which, Buchanan argues, is impractical because they adhere to political self-determination only and devise their accounts detached from the current political, global structure (see Chapter 2).

Second, in order to illustrate why we should not exaggerate the importance of self-determination (as the primary right account does), Buchanan clarifies two modes of self-

determination. Current international law advocates the self-determination of peoples, classified by James Anaya, into (1) the *constitutive* account, which asks a group to review the nature of its political status (that is, whether it should be an independent state); and (2) *ongoing* self-determination, which considers the completeness of self-government.[19] The constitutive mode of self-determination emphasises whether legislation expresses and allows collective autonomy, whereas ongoing self-determination is mainly concerned with whether the people are able to pursue their ideal lives after legislation has been enacted. Furthermore, constitutive self-determination is highly likely to shape the national pursuit of a claim to independent statehood, since people expect to achieve self-rule by controlling political or legislative authorities. Yet, ongoing self-determination, in a weaker sense, does not necessarily demand independent statehood, because the people are chiefly concerned with whether they are able to achieve individual self-fulfilment. The formation of that ongoing environment is not the primary concern, because group members stress individual freedom and/or their ability to exercise that freedom. A claim to self-determination rooted in this mode thus does not necessarily demand independent statehood. Yet, if the claim is grounded in the first, constitutive mode of self- determination, then it should at least be a plausible and valid claim in a prima facie case as long as their (secessionist) collective autonomy is proved to be seriously violated. Thus, the overlapping idea of the two modes is the pursuit of an independent domain of *political control,* rather than independent statehood. Therefore, Buchanan concludes, even if a group wishes to pursue self-determination, the nature of their targeted political unit or the extent of their control over this unit is open to dispute.

[19] James S. Anaya, *Indigenous Peoples in International Law* (New York: OUP, 1996), p. 81.

Third, if the existing international law is taken into consideration, which is a state-led institutional scheme, then the primary concern should be how to legitimate the state's hold of territory. He proposes justice-based political legitimacy and argues that a state territory should not be ceded if the state meets that criterion. Secession could then only be proposed unilaterally when the state is judged to lack political legitimacy, which is understood as achieving a minimum standard of justice: the protection of basic human rights (e.g. the right to subsistence, personal autonomy and basic political rights such as the freedom of association or the freedom of speech).[20] Secession, therefore, should be a last resort for the victim to remedy the violation of their human right, and can be claimed unilaterally, proceeding without interference provided one of the following three conditions is met: *(1) large-scale and persistent violations of basic human rights; (2) unjust conquest of a legitimate state's territory; or (3) serious and persisting violation of intrastate autonomy agreements by the state, as determined by a suitable international monitoring inquiry.*[21]

Buchanan's proposal is problematic for to the following reasons. First, his political legitimacy presents a strong status quo bias; that is, whoever succeeds in securing minimal justice in a given area gains state sovereignty over that territory and can claim non-interference. Such an account, while ignoring previous unjust beginnings of states (such as conquest, annexation, colonisation, etc.) endows the extant power-wielders with very strong territorial entitlements, because the claim to non-intervention covers both outsiders and citizens i.e. those most affected by the unjust genesis of the state. This bias, as pointed out by Anna Stilz, may confer

[20] For a more detailed argument, please see Allen Buchanan, *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law* (Oxford, OUP, 2003), pp. 145-161; 247-60.
[21] *Ibid*., p. 218

legitimacy upon, or encourage, 'benign' annexation or colonialism.[22] Suppose a civil war breaks out in a state. In the name of peace-making, a neighbouring state sends in its army and occupies a portion of the territory. If it restores basic justice on that land, according to Buchanan's political legitimacy, the neighbouring state has the right to claim this land as its own, without outsiders' interference. Buchanan may contend that his second condition for secession, (i.e. unjust taking of a legitimate state's territory) prevents such events. However, my example exposes a theoretical vacuum, between an unjust, violent annexation and the normal, ideal establishment of minimal justice. If the original state cannot be restored and the people on that portion of land wish to build a new state, Buchanan's territorial account would confront a difficulty, in that the annexing state appears to have the discretion to decide whether it should allow the new state to establish itself, or whether the annexing state should claim the newly occupied land for itself. Such an absurdity also reflects the second problem for Buchanan's account: the minimal justice view of political legitimacy cannot be the whole rationale behind the three conditions for unilateral secession, and yet states' right to territorial integrity is based only upon the protection of minimal justice. According to Amandine Catala, resistance to annexation and the endorsement of intrastate autonomy implies the recognition of self-determination as an important constituent of state's territorial entitlement, because grave injustice does not necessarily occur during the annexation or persistent violation of intrastate autonomy.[23] If so, unilateral secession can be permitted without grave injustice and so the protection or provision of minimal justice should not be the sole normative basis of state's territorial entitlements. This conclusion clearly violates

[22] Anna Stilz, *Territorial Sovereignty* (Oxford: Oxford University Press, 2019), p. 91.
[23] Amandine Catala, 'Remedial Theories of Secession and Territorial Justification,' *Journal of Social Philosophy* 44, no. 1 (Spring, 2013): pp. 74-94.

Buchanan's account of political legitimacy or territorial integrity. We thus have sufficient reason to re-evaluate the validity of Buchanan's remedial right only theory.

Let me now draw a lesson from the foregoing review of secession theories. I believe that the most urgent issue is to provide a cogent account of territorial rights as another normative foundation of justified secession, because the right of secession touches upon both the authority over 'people as subjects' and 'state territory as a place of jurisdiction'. Territorial rights, then, amount to an appropriate political relationship between the state, its subjects and territory, by which we understand what rights the state and its subjects can hold as regards that territory. All three theories emphasise the relationship between the state and people. Wellman offers his samaritan account of political legitimacy and points out the space for justified secession within it, in which secession gets the green light if the state can still discharge its samaritan duty. Such an idea, however, does not account for or verify secessionists' claims to certain territory. Miller's nationalist or ascriptivist theory starts with a group of self-determining people (i.e. a nation), but the conceptual mismatch between a nation and a group qualified to claim secession reflects again the importance of territorial rights, because a nation may not necessarily wish or need to be concentrated in a single territory, while a group wishing to claim secession does. Although Buchanan notes the importance of territorial rights in terms of secession, his territorial account is problematic due to the direct extension of political legitimacy to state territory; that is, his framing of political legitimacy still relies on the relationship between the state and people. Given the necessity of territorial rights in any theory of justified secession, I shall now proceed to unfold such a concept and how it connects to an account of justified secession.

2. Territorial rights and secession

How does the idea of territorial rights deliver a better account of the right to secede? I shall argue that it does so by addressing (1) how to counter the unjust genesis of a states; (2) how to evaluate competing, overlapping claims to the same swathe of territory; and (3) how to reconcile the right of self-determination (which includes the right of secession) with the right to territorial integrity. First, I will define the concept of state territory.

2.1. A basic understanding of territorial rights

I take the dominant view of the jurisdictional authority account. This conceives of territory as *the geographical domain of jurisdictional authority*, within which a state can exercise control of its territory and claim the right to jurisdiction as supreme arbiter of political authority. While a land contains both people and natural resources, the right to jurisdiction implies also the right to access and use those resources and the right to control the border (such territorial rights have property-like dimensions, but as explained above, and as will be reiterated below, property and territory are separate ideas). Moreover, the state is entitled not only to create and enforce laws within its geographical domain but also to 'alter the juridical status' of the territory.[24] This means that it can share part of itself with other political entities (e.g. joining the EU, UN or other supra-national bodies), submit to another jurisdictional authority (i.e. irredentist secession), or dismember itself (i.e. secession or devolution). The right of secession,

[24] See A. John. Simmons, *Boundaries of Authority* (Oxford: OUP, 2016), pp. 93-100; Margaret Moore, *A Political Theory of Territory* (Oxford: OUP, 2015), pp. 26-30.

therefore, demands a cogent account of territorial rights, because it is necessary to understand who has the final say over the right to jurisdiction.

The dominant view can be contrasted with the old-fashioned, possession view, on which a state holds its territory just like a person owns its property. The possession view treats political territory as the property of state, so the state's rights to dispose of territory is almost absolute and inviolable. Thus, no-one has the right to criticise what the state does within the territory or to any person within the territory; and the territory is created to serve the state's instrumental benefits. However, this view has at least two serious flaws that compel us to reject it. Firstly, it is counterintuitive in the contemporary era because, while we do not ask a property-owner to treat their property in a particular fashion, we do require states to treat their territories and the citizens of those territories in certain moral ways. That is, even though the state can legitimately possess non-privately-owned property and control the borders unilaterally (just like an individual acts towards their property), other behaviours are limited by what justice demands. Secondly, this moral treatment sheds light on what Arthur Ripstein calls 'the internal norm of sovereignty' inherent in the state's relationship to the territory, and which ownership lacks.[25] The internal norm indicates that part of the normativity prescribing the relationship between the state and territory comes from a normative relationship between the state and the people within the territory. Namely, morality convinces us that states' exercise of power should also be constrained by moral commitments to the interests of subjects, in addition to universal moral requirements. Compared to ownership, although the usage of property is limited to prevent harms to others, this

[25] Arthur Ripstein, 'Property and Sovereignty: How to Tell the Difference,' *Theoretical Inquiries in Law* 18 (2017): 243-268.

normative principle is not generated by an internal relation between a property-owner and its property, but from an external moral norm (say, the Lockean proviso, or Mill's harm principle). As such, we discard the possession view and subscribe to the jurisdiction view for an account of territorial rights, because only the latter can illuminate such an internal norm.[26]

The jurisdiction view on territorial rights is a peculiar idea. We can frame it as an aspect of state legitimacy with respect to what condition justifies a state's exercise of power within a specific land. The traditional account of state legitimacy attends to states' rights to rule over subjects, while territorial rights focus on the territorial dimension of political authority. The territorial dimension has two significant features. Firstly, any individual and natural resources within the territory are subject to the jurisdiction it creates; yet secondly, only one particular group with certain characteristics (i.e. citizens), rather than every person within the territory, is able to be the source of the jurisdictional authority. This may seem to entail power inequality: if anyone within the territory is subject to the political authority, why is only some of those people qualified to constitute the authority? To counter this inequality, a just constitution of demos is necessary. That is, we should devise a fair institutional system protecting people's political rights. However, the concern about demos cannot be satisfactorily addressed unless we understand the territorial dimension of state legitimacy. Prior to being a member of demos, one must be in a territory, and drawing particular territorial boundaries here or there determines what jurisdictional authority one submits to. For better analysing an account of territorial rights, let me formulate it as follows:

[26] For a more detailed criticism of the possession view, please refer to Moore's *A Political Theory of Territory*, pp. 17-26. Cara Nine, 'Territory is not Derived from Property: A Response to Steiner,' *Political Studies* 56 (2008): 957-963.

By virtue of (what normativity) *N*, (the rights-holder) *H* is justified to be attached to/particularise certain territory in a particular way of attachment *A*.

Here *N* articulates a normative basis as why the rights-holder should be entitled to territorial rights; *H* refers to an appropriate candidate holding territorial rights; and *A* indicates an account of territorial attachment, i.e. how the rights-holder justifies its claim to jurisdictional authority associated with a particular territory.[27] These three issues can be summarised as the normativity, eligibility and attachment problems, for which any theory of territorial rights should account.

2.2. Three fundamental territorial concerns

There are three further concerns making the above three issues (N, H, A) more complicated, shaping the form of justified secession.[28] First, most states establish their territories in an unjust manner (e.g. conquest, annexation or expulsion). This entrenches some ethnic or cultural groups within an intricate, biased social structure. Simmons terms this 'wrongful subjection', according to which the state is involved in enforcing the submission of some subjects. This is a fundamental and structural flaw with respect to the oppressed subjects, because their inferior or disadvantaged political status prevents them from remedying the situation themselves. The Kurds in the Middle East again are a case in point: the Kurds inhabit a geographically contiguous area, divided up between Turkey, Iran, Iraq and Syria. Historical

[27] I owe this formulation to Kolers. See Avery Kolers, *Land, Conflict and Justice* (Cambridge: Cambridge University Press, 2009), 22-23.
[28] The practical and compositional problem are found in the work of Miller and Moore. See David Miller and Margaret Moore, 'Territorial Rights,' in *Global Political Theory*, ed. David Held and Pietro Maffettone (Cambridge: Polity Press, 2016), 180-197.

contingency thus makes this large group an ethnic minority in each of these states. While many secessionists appeal to some unjust historical event that has disadvantaged them, a plausible account of territorial rights should provide adequate resolution of wrongful subjection. This naturally implies the second concern: the practical problem, which shows that multiple and competing Hs (i.e. territorial rights-holders) may asserts their territorial entitlement to the same area of territory. This asks why the boundaries of state territory should be drawn as they are now. Should the territory of the United Kingdom always include Northern Ireland? Can the territorial claim of the Tibetan government (made in exile) to Tibet outweigh that of the Chinese government? The practical problem contests the current territory-holding of states.

Third, theorists dispute what incidents of territorial rights we ought to assert: the composition problem. For instance, Cara Nine notes that the rights are composed of four elements: (1) jurisdictional rights over persons within the territory; (2) jurisdictional rights over resources; (3) ownership rights over resources; and (4) the authority to determine residence, immigration, and citizenship rights regarding the region, among which she argues only the first two are necessary (or morally justified). The compositional problem is especially important to an account of the right to secede, because it is commonly assumed that secession inevitably outweighs the state's right to prohibit the dismemberment of the territory or the right to territorial integrity, given that the state holds territorial rights. One may thus argue that territorial rights should not contain the right to prohibit secession if the right of secession can be justified, or vice versa. The recognition of territorial integrity and self-determination/secession becomes an either/or question. Yet, as illuminated by Brilmayer, the right or principle of self-determination is not inherently in tension with the principle of

territorial integrity, and under a plausible account of territorial rights, the two principles should be coherent with each other.[29] That is to say, an account of territorial rights enables us to articulate under what circumstances the exercise of the right to secede (derived from the right to self-determination) would not violate states' right to territorial integrity. It would not be counter-intuitive anymore if the right of secession and the right to prohibit secession both existed.

Thus, wrongful subjection, the practical problem and compositional problem are the three fundamental territorial concerns that a cogent account of territorial rights has to address if the right to secede or any proposal for justified secession aims to obtain a solid basis. To understand them more clearly, let me rephrase the three concerns into questions: (1) how to counter the unjust genesis of states; (2) how to evaluate competing, overlapping claims to the same area of territory; and (3) how to reconcile the right of self-determination with the right to territorial integrity.

3. The fundamental framework of a theory of secession: dualist justification

Given the literature review of past accounts of the right to secede and the significance of territorial rights for the right, I propose to revisit a normative theory of secession with the following account.

[29] Lea Brilmayer, 'Secession and Self-Determination: A Territorial Interpretation,' *Yale Journal of International Law* 16 (1991): 177-202.

Secession challenges two kinds of state authority: one over subjects, and one over territory. For this reason, any group claiming to secede has to show that the authority over themselves *and* the land on which the would-be state aims to build is no longer valid. This seems to suggest two sorts of investigation. First, we examine the relationship between the state and subjects, by which we ask whether secession as a *political activity* is still morally permissible if the conditions for state legitimacy are satisfied. We may consider whether the right of secession has similar moral worth to some basic human rights. Do people have a fundamental right to exercise the freedom of secession, or should the right to secede be subject to the discretion of the state? Second, we weigh different territorial claims between secessionists and the state, and see which is more morally compelling. That is to say, when claiming to repudiate state authority over a particular swathe of territory, we consider under what condition either claim is justified in overriding the other. This switches our focus to the *territorial entitlement* of people or states, as distinct from the first kind. These two types of state authority reflect two claims of secession: that one overrules subjects, and the other is about territorial control or territorial sovereignty.

Nevertheless, a theory of secession with a cogent account of territorial rights should not advance two normatively separate investigations as to the two claims. A concern about rights to control territory should also be taken as a political activity, by which the two claims should be justified with holistic and coherent normativity. If one is justified by appeal to a balanced view of state legitimacy and self-determination, so is the other. That is to say, although these two investigations are conceptually different, they shall apply to the same concrete instances of secession. It should not be that one could be justified while the other cannot. In order to avoid normative incoherence and secure conceptual distinctiveness, I propose to revisit

secession with the dualist justification: the first part asks, what conditions justify a state's claim to territorial rights (which contain a right to prohibit secession)? The second part aims to justify taking over a *particular* area of state-occupied land to build a (new) state. Call the first part the statist justification, because it provides the (territorial rights) criteria that a state has to meet if it claims the right to forbid secession. The second part, the secessionist justification, accounts for what rights to their territory secessionists are entitled to if a host state achieves the statist justification; and if the state fails to achieve this, how they might then justify their claim to secede.

My fundamental structure is termed 'dualist' not only because it takes both the state and secessionist perspectives into account, but because it is also envisaged to capture a proper and balanced interaction (as to territorial rights) between the state and the people striving for greater group autonomy. Balance is achieved through the state territory being shared by the state and each subgroup who has territorial entitlements to their claimed land. Unilateral secession should be forbidden, provided that the ideal, balanced interaction occurs. The state, in order to justify its territorial rights over the whole state territory, should demonstrate that it is respecting and protecting subgroups' territorial rights. The dualism, therefore, can also indicate an interaction between citizenship as a nationwide identity and territorial subgroups holding another distinct group identity, because subjects are endowed with citizenship rights through which to realise their individual and social goals when they are incorporated into the state's jurisdictional authority. In other words, in what way the state can impose citizenship upon each subject without suppressing their corporate, territorial interests becomes the first issue that a justification for the right to secede has to deal with (see Chapters 3 & 4).

Subsequently, the flip-side of the preceding justification reveals under what circumstance a state's territorial rights over the whole territory would be undermined and what a qualified claimant to secession should be, by which a territorial subgroup would have to find a way to secure their territorial interests. However, the answer to this question may not entail the justification of secession directly, because, as shown in Miller's or Wellman's account, secession is not the only means to achieve self-determination. What matters here is to what extent the state *fails to protect* the territorial rights of certain people. As such, the second, secessionist justification devotes itself to principles for justified secession, and derivatively, a new account of the right to secede (see Chapters 5 & 6).

Chapter 2: On the Methodology of a Theory of Secession

0. Preface

In this chapter, I shall argue that, with respect to constructing a theory of secession, pre-institutional moral reasoning cannot be excluded by the institutional; and accordingly, I shall subscribe to the two-stage view on the matter proposed by Daniel Weinstock.[1] Pre-institutional reasoning is defined as that which does not consider what institution it may apply to; it thus theorises primarily about what acts should be undertaken based upon morality, seeing its application within an institution as a separate enterprise. Instead of this dualist position, institutional reasoning predicates the justification of the act on the form of the relevant institution, under which the ideal mode of institution is firstly specified as the higher norm (with its particular ends) and considers subsequently how the act should be incorporated into the norm. For instance, we devise a set of basic human rights as the universal and fundamental interests that every society ought to protect. Since the rights may derive their justification prior to any form of institution, they should condition the norms of any society pre-institutionally. Yet how the constitution of a given society should be conditioned by these rights is a different, distinct matter from the pre-institutional justification. This is the illustration of pre-institutional moral reasoning. By contrast, the justification of some act, like the decriminalisation of sex work, appears to align with institutional reasoning by which we justify the practice based upon what core values the institutions aim to safeguard. The practice is subject to, rather than independent from, the

[1] Daniel Weinstock, "Constitutionalizing the Right to Secede," *The Journal of Political Philosophy* 9 (2) (2001): 182-203.

form of institutions. Such discussion reflects the contemporary debate over the methodology of political/social philosophy, which touches upon ideas like feasibility constraints and practice-dependence.[2] Yet, due to the terminology adopted in the literature on secession, those ideas are reframed by the contest between pre-institutional and institutional moral reasoning (henceforth *PMR* and *IMR*).

It is not hard to see that the contest between these two systems of reasoning revolves around the question of *whether PMR is necessary or helpful for settling the issue*, viz. what right of secession we should advocate. With respect to IMR we need to clarify which institutions are relevant. Here, the institution in question refers to the current international order rather than the traditional understanding of statehood (i.e. the state and its subjects). That is to say, while the PMR camp holds the identification of independent moral values to be a prerequisite for reform or enhancement of international law, the IMR camp argues that we should think of rights in terms of their role within an international institution. In order to address this issue, I shall elucidate and analyse the dispute in Section 1 by spelling out the arguments for each line of reasoning, concluding that some PMR is still necessary to articulate, with respect to the question of secession, how the international order can be enhanced. Section 2 will introduce Weinstock's approach which holds that both lines of reasoning are indispensable. Thus, while PMR aims to articulate the (moral) right to secede, IMR endeavours to recognise whether the institution at issue is justified in implementing the right, and if not, how the institution should meet the right in the future. Furthermore, this twin-track approach will be

[2] For an explanatory work on feasibility, see Pablo Gilabert and Holly Lawford-Smith, "Political Feasibility: A Conceptual Exploration," *Political Studies* 60 (2012): 809-25; as to the idea of practice-dependence, see Andrea Sangiovanni, "Justice and the Priority of Politics to Morality," *The Journal of Political Philosophy* 16 (2) (2008): 137-64; "How Practices Matter," *The Journal of Political Philosophy* 24 (1) (2016): 3-23.

defended by showing its methodological advantages in demanding an account of territorial rights, endorsing the progress without radical reform (i.e. progressive conservatism) and upholding a proposal satisfying to a variety of moral codes (i.e. moral convergence).

1. Pre-Institutional vs. Institutional Moral Reasoning

IMR theorists argue that, in order for a principle to qualify as one that justifies secession, it needs to find a place within an institutional scheme. A value or principle that is not recognised by our best form of institutions was never really a value in the first place, or at least not one we should endorse. By contrast, PMR theorists argue that we should concentrate on getting our values straight and that whenever we have, they consist of *pro-tanto* reasons for inclusion in an institutional scheme. When a value or principle is hence dismissed, however legitimately, that is a matter for regret. The debate concerning better moral reasoning over secession has two key controversies. First, there is the argument as to whether secession is an inherently institutional concept containing necessarily a right to international recognition. Second, there is debate as to whether what morality requires of the right could help articulate what sort of (legal) right an institutional scheme (say a legal system) should recognise. The PMR camp replies to these questions with two affirmatives, whereas the IMR camp would give two negative answers. Moreover, the former tends to advocate the primary right to unilateral secession, while the latter the remedial right only. Let me illustrate these two accounts.

1.1. The significance of IMR

IMR is mostly defended by Allen Buchanan and David Lefkowitz. They argue that, because secession is an inherently institutional (i.e. international legal) concept, any theory of secession must be developed in accord with IMR: 'whether a particular account of the right to secede is defensible will depend upon whether embodying its principles in the international legal order would, all thing considered, promote the proper goals of the systems'.[3] This argument has two important components. First, it demands holistic theorising about the right of secession, which advocates that the consequence of this theorising should be compatible with the legal or institutional scheme in question, in spite of the conceptual and justifiability difference between moral and legal rights in general.[4] This is required not because we have an additional goal of implementing or legalising the right, but because the actual political activity of secession can only be carried out within a social, legal system. Secession calls into question established institutions and aims to form its own legitimate state enjoying the entitlements (like the host state) conferred by international law. Moral reasoning is helpful to the right of secession only if it takes such institutional features into account. Second, the theorisation of the norm (regulating secession) should precede the theorisation of the right in the sense that the latter should be devised to protect the former, not the other way around. The institutional nature of secession not only reflects what norm (e.g. international law) secession may concern, as well as the theoretical order that the nature or values of the norm should be primarily investigated and identified, but also explores

[3] Allen Buchanan, *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press, 2007), 348.
[4] I will explain this distinction more clearly in section 1.2.1. when introducing how PMR approaches secession.

subsequently what right of secession the norm should subscribe to. Based upon this argument, the IMR camp holds that a justifiable account of the right to secede should be consonant with our contemporary system of international law. It must possess the capability to shape a proposal for international law. To examine IMR's assertion, I shall scrutinise how sound the two components are.

1.1.1. Holistic theorising and international recognition

As argued by Lefkowitz, secession should be defined in terms of what it claims, and many such claims are bound up with the extant institution: international law.[5] This implies that international law is the higher norm governing secession, and that theorising the right to secede should take a holistic view that takes the protection of such a higher norm into account.

When secessionists make a claim to secede, they are demanding the same entitlements as those of their host state. According to Buchanan, the dominant view conceives of these entitlement as the right to territorial integrity; the right to non-interference in domestic affairs; the right to change its juridical relations to other states (such as making treaties or alliances); the right to declare (just) war; the right to exclusive jurisdiction over the subjects, natural resources and borders of the territory; and the right to participate in the basic process of international law.[6] Each of these rights is conceived of as non-absolute and requiring further specification when implemented. Those rights, however, are conferred and secured

[5] David Lefkowitz, "International Law, Institutional Moral Reasoning, And Secession," *Law and Philosophy* 37, no. 4 (2018): 385-413.
[6] Buchanan, *Justice*, 263.

by international law where compliance with and the source of the law refers to a group of mutually recognised states. This reflects the following points. First, a claim to secede is not merely a transaction between the seceding groups and their host states, but also involves international law, which can legitimately govern or intervene. Second, the alleged mutually recognised states are the main source of the authority of international law, just like citizens in relation to their sovereignty or the law. Third, the seceding groups cannot simply claim to be the protectees of international law, but must also to be one of the legislators that shape the global order, which necessarily demands the recognition of extant states. Therefore, fourth, a prospective seceding state should be required by international law or the extant recognised states to establish its legitimacy in terms of being recognised legally as an independent, autonomous agent whose status is equal to that of the current recognised states. This recognised legitimacy, fifthly, not only implies certain criteria that the seceding states should meet in order to join the body of international law (as immigrants have to meet certain conditions to become a citizen of a foreign state), but also confines the theorising of the right (to secede) to IMR, meaning that we should take the higher norm (i.e. international law) into account. An account of the right that would overthrow most extant states is deemed to be unjustified, not just because of impracticality, but also because of the connection to international recognition.

Lefkowitz argues that to ignore this connection to international law (namely that secession is defined without recognitional legitimacy), would either imply that (1) secession does not require a right to territorial integrity, to border control and to exclusive jurisdiction over subjects; or (2) that the idea of secession proposed is based in an entirely different view of global order from the current one. The first implication conflicts with what secessionists

themselves typically claim, while the second shows that secession is a contextually dependent act, which, in our era, depends on international law characterised as a multi-polar, horizontal global order. This contextual or institutional understanding of secession can also be illustrated when thinking a scenario different from our contemporary international order. For instance, a feudal lord in medieval Europe might justify his claim to 'secede' only in terms of changing his loyalty to the king he serves, while maintaining his allegiance to the Church. Given that the legitimate rule of kings was subject to the Church, understanding this vertical power relation between the kings and the Church becomes necessary in justifying such secession. In terms of secession in our own time, this relation between kings and the church has no significance, for our understanding of secession presupposes,

> a world composed of political communities that neither claim to rule nor to be ruled by one another, and who share to a considerable degree a common understanding of the jurisdiction that comprises the independence or sovereignty each enjoy vis-à-vis the other.[7]

Secession thus understood is always an institutional concept and the concept of institutions in our time refers not just to statehood *per se* but also to the body of international law, both of which demand holistic theorising on the right of secession.

[7] Lefkowitz, "International Law," p. 390.

1.1.2. The norm comes first

Holistic theorising does not necessarily support the priority of the norm (viz. international law) over the right to secede, because, when the norm conflicts with a given account of the right, it does not explain why a justified norm of international law should override a justified account of the right. Even though it is a common practice that international law can intervene in or against a secessionist movement, this practice plus any proposal for the right should both undergo scrutiny. Why should an account of the right always be subject to a norm of international law?

Lefkowitz points out the distinction between a theory of the value of political self-determination and a theory of a justified norm governing secession, and argues that any valid account of the right should follow the latter path, that is, be justifiable to a (justified) norm governing secession. A theory based on the value of political self-determination has two main tasks: (1) to explain why secession is valuable in terms of political self-determination; and (2) to explain under what conditions we can exercise such a valuable right. The rival theorising instead proceeds with (1)' identifying what norm(s) secession would touch upon; (2)' understanding (or re-interpreting) the nature and value of the norm; and (3)' devising the principle of or the right to secession best coherent with the norm.

Why does Lefkowitz think that an adequate account of secession should take the form of institutional theorising? Simply put, he believes the pre-institutional approach falls short of treating many important issues impartially. The first problem is the *indeterminacy of action*: the theory would fail to determine what course should be followed if there were other

options satisfying political self-determination as well. In other words, there may be reasons favouring secession, but inconclusively. If a primary right account of secession is justified, then it should further require either an account of why it is secessionists having the right to propose secession unilaterally (provided that the secession proposed would not impose injustice on others), or additional criteria for prioritising secession rather than other less extreme means. Secondly and thirdly, the pre-institutional theorising has potentially an unbalanced focus on secessionists, which may undervalue an account of *reconciliation* and *accountability*. It needs reconciliation when a given secession conflicts with the political self-determination of other people or when it clashes with values other than self-determination. It also demands accountability, which refers to a set of rules of interaction among the agents at issue, without which the former issue (i.e. reconciliation) cannot be addressed comprehensively, nor can the higher norm (say international law) be sustainable, because the relevant agents do not understand what responsibility they should take, according to what the theory proposes.

It is possible that a value theory of political self-determination could dismiss these doubts by supplementing the aforementioned accounts. However, this response would either align itself with Lefkowitz's institutional approach or fail to address the problems, as it under-theorises the concerns. For the three problems or requirements can only be addressed by a higher-order norm beyond any morality of secession, under which we secure not only political self-determination, but also other values. Theorising on secession is therefore conditioned by the higher norm, designed not only for secession, but also for other international human affairs. Such a commitment should lead theorists to prioritise an inquiry into the nature, value and sustainability of this higher norm, by which the aim of theorising should be this normative

theory, rather than a value theory of self-determination. It then implies a constraint on theorising: we should not assert an account of secession at the expense of a norm we commonly uphold to regulate secession. Once the first approach adapts itself to the priority of the higher norm, it starts to look more like the second approach. Otherwise, the norm devised would either be partial (because it values self-determination exclusively) or incomplete (for the norm proposed may need to be supplemented by a auxiliary theory, convincing us why many extant practices should be abandoned and how we may realise the new norm) given the insistence on the first approach (which means it still considers the three issues less important than self-determination).

Therefore, granted that secession is inherently an institutional, international-law-related concept, and the institution in question secures more values than political self-determination, IMR should apply to the moral right of secession by devising an all-things-considered norm (i.e. international law) governing secession.

1.2. The significance of PMR

In contrast to IMR, the PMR camp insists on the conceptual distinction between what morality requires of the right and what (legal) rights to secession institutions should recognise: it advocates 'a moral right of secession that is normatively prior to and independent of whatever legal right to secession might be best for incorporation into international law'.[8] However, two points have to be clarified. First, PMR theorists do not insist that international

[8] Andrew Altman and Christopher Heath Wellman, *A Liberal Theory of International Justice* (Oxford: Oxford University Press, 2009), 56.

law must recognise whatever is derived from PMR. Instead, they can accept their proposal being turned down by institutions for practical reasons, but meanwhile argue that the non-recognition is at the expense of the moral right. We should bear in mind that even though the institution (i.e. international law) is all-things-considered justified in not recognising the right, it is a moral loss that needs to be rectified in the future if possible. Second, it is a mistake to think that the IMR camp conflates moral and legal rights. IMR holds that an appropriate account of the moral right to secede, if it exists, should be compatible with and thus recognised by the higher norm governing secession because, as long as secession is inherently institutional, its morality should always be a matter of recognition determined by the norm. To rebut this view, PMR camp must either argue that secession is not inherently an international legal concept, or that this feature is not sufficient to make IMR outweigh PMR. In what follows, I shall firstly explain the general conceptual distinction between the justification of moral and legal rights; and subsequently show why the conceptual difference should still hold in a theory of the right to secede by showing the superfluity of the international recognition argument in 1.2.2. and the importance of the moral loss argument in section 1.2.3.

1.2.1. Moral rights vs. Legal rights

According to Dworkin's metaphor of rights as trumps, rights have a special normative, trumping power that grants the right holders permission to act in a certain way even if some social aim or utility would be served better by doing otherwise.[9] Nevertheless, the

[9] Ronald Dworkin, "Rights as Trumps," in *Theories of Rights*, ed. Jeremy Waldron (Oxford: Oxford University Press, 1984), 153-67.

normativity of rights can be derived in two different ways. Following Newman, a moral right is a justified claim or entitlement that only depends on what morality requires rather than what a legal system should recognise; conversely, a legal right refers to a claim or entitlement whose justification must be determined by a legal norm, which indicates the recognition of a legal system based upon a proper interpretation of the norm and how it incorporates the claim.[10] Given that the concept of morality refers to the alleged common human interests, the idea of moral rights, once justified, can go across time and space and have some universal and general applications. By contrast, the validity of legal rights depends on the institutions to which they subscribe. Some conduct is deemed to be (legal) rights only in a particular norm that issues the recognition, because the social practices or conventions behind the norm reflect people's shared understanding of or identification with, the conduct. The distinction is important because the justification of either cannot automatically entail the other, although their rationales sometimes overlap. For example, criminalising torture may be justified by the protection of the moral interest not merely in existence but also dignity.

Yet, in most instances, the justification of moral rights should be distinguished from the basis of legal rights. For instance, we might advocate a moral right to free movement justified universally to each individual, but hesitate to support such a freedom being recognised immediately by the legal system of a state, meaning that the state is still entitled to take legal means to check anyone's entry into the territory or the (legal) right to turn down a visa application. The hesitation is not necessarily a denial of free movement but concern about feasibility constraints, such as the need to build up a cross-national jurisdiction scheme first.

[10] Dwight G. Newman, "Collective Rights," *Philosophical Books* 48 (3) (2007): 221-232, p. 222.

This repeats the logic of IMR: a norm or institution has its own set of rules evaluating the justification of a given action and we should take the sustainability of that norm seriously. The same result can be found from the opposite viewpoint: that is, a legal right is not always derived from a moral right. A case in point might be traffic rules such as traffic signals or the legal age of driving. It is highly implausible that there is a straightforward moral foundation for such rules, which are mainly the result of social conventions. Despite the lack of moral foundation, a legal system still needs to regulate the traffic, because by so doing society can have clarity and efficiency on the roads. As such, the legal right to drive and to follow traffic signals would be recognised by the legal system not because we first justified their moral rights, but because society recognised the need to control traffic for wider social benefits. Thus, a legal right is not always based upon a corresponding moral right.

Nevertheless, the conceptual differences mentioned above cannot deny the possibility of some middle ground in which we might first moralise the institution and then contemplate what (legal) rights such moralised institutions ought to recognise. The IMR camp holds this view on secession. Yet to rebut this position, an emphasis on the generally conceptual difference between moral and legal rights is insufficient. The PMR camp must show that a direct application of morality to secession, without taking international law into account, is still helpful and necessary. Let me then introduce the first counterargument, which advocates the dissociation of the right from international recognition.

1.2.2. The contingency of international recognition argument

Recall that the most essential component justifying the theoretical advantage of IMR is its observance of secession's institutional nature, that is, the right to secede necessarily consists of a claim to international recognition. As shown in sections 1.1.1 & 1.1.2, the latter concept denotes the right to be recognised not just as a protectee, but also one of the legislators, of international law. The right to secede, therefore, should go beyond the relationship between the seceded and seceding states and prioritise the protection of international law as the higher norm governing secession. Moral theorisation of such a higher norm should take precedence over the theorisation of the right to secede.

PMR advocates counter such an approach by arguing that secession as an institution-related concept should be understood primarily on the basis of *de facto statehood* instead of an international legal concept, because international recognition of secession is no more than a contingent requirement. If we agree with this claim, there is no necessity to follow IMR and IMR theorists fail to dismiss the role of PMR in our understanding of the right to secede. What morality requires of the right should thus be independent from what international law recognises. Why is the demand for international recognition contingent? They ask us to imagine two possible worlds: the first has only one (world) government and the second has multiple states yet lacks shared international law.[11] As long as these two worlds share the same idea of statehood as we do, we share the very similar moral principle of, or the right to, secession with them. These worlds (including ours) overlap in that secession begins with a

[11] Altman and Wellman, (2009), p. 58.

challenge to the political authority of states over their subjects and territories, and subsequently claims to establish its own state entitled to the same rights as the host states. The structure of international law is only one important variable amongst others, but not a necessary constant determining principles. Therefore, if PMR is rejected simply because it does not take international recognition into account, these examples illustrate that, given such a requirement is merely contingent, the alleged institutional nature of secession does not necessarily contain a claim to international recognition and thereby IMR lacks the theoretical advantage it claims to have.

Such a contingency can be seen more clearly in another scenario, namely constitutionalising the right to secede. Consider the following questions. Can IMR apply to this case? Yes. Does it need to understand what morality requires of the right? I believe it should consider it in order for a society to realise what moral principles they can follow. Must it necessarily conform with the result of PMR for the understanding of the right? This is a context-dependent question, resting upon what form of constitution is at issue, because, as previously pointed out, the concern about legal recognition is conceptually different from pre-institutional moral reasoning. The institution is entitled to make the judgement in its own right. Yet it would not necessarily take international recognition or what right of secession international law recognises into account. The reason for this is more than the simple fact that a constitution has no authority over such an issue, but because the claim to international recognition is really a secondary, rather than primary, concern as to secession. We can therefore see that, for IMR, which factors ought to be taken into account depends on what institution is in place and the relations between the institution and secessionist claims. Given that international law is not inherently the institution governing secession, the claim for the

need for the permission of international law is contingent and not necessary to the right of secession. The PMR camp, by contrast, holds a more general and universal position that the right of secession concerns constantly and primarily the relations between the state, territory and a group of its subjects. It would be unreasonable to dismiss such pre-international-law moral reasoning when theorising the right to secede.

IMR theorists may contend that, regardless of what the right would relate to in any other possible world, it must obtain international recognition in *our* current world; so, it is still necessary to take such an international legal idea into account for theorising here and now. PMR, therefore, has no benefit in our world because, again, it fails to take the body of international law into consideration. To evaluate this reply, we have to examine more carefully what this contingent but necessary-in-our-world fact truly entails. If the extant system of international law takes international recognition as its fundamental constitutive factor, then surely the right to secede should consider this seriously when the system decides what right it should recognise here and now. Given that international law is treated as the higher norm governing secession, IMR theorists may be correct to require moral reasoning to target, theorise the body of international law, weigh up different accounts of the right and determine which best fits in with the law. However, it is hard to concur with the IMR camp that simply because some claims of secession necessarily relate to international law here and now, we should deem international law to be the higher norm governing secession, rather than a revisable entity that can be shaped more or less by what morality requires for secession.

The statement that international law is the higher norm governing secession, however, is quite misleading if we understand 'norm' and 'governing' as substantive terms. This is

because in practice, determining international recognition and deriving a justified way of establishing *de facto* statehood are politically/jurisdictionally separate; and current international law takes charge of the former, but abstains from the latter. Due to the extant structure understood as horizontal political order, the effectiveness of international law is restrained by the domestic jurisdiction and non-intervention principle[12] and is thereby quite unhelpful to address most substantive issues that might emerge in the process of building *de facto* statehood, unless basic human rights have been violated. It is correct to hold that justified secession here and now should include justification of its right to international recognition, given that secession in our time is *partly* governed by international law, but it is dubious to take international recognition as the most fundamental, constitutive property of global order. Given that not all claims of secession are governed by international law, it would be unreasonable to require the law to overlook the result of PMR just because PMR does not take one of the characteristics of international law into account.

Furthermore, the plain truth is that the current body of international law, unfortunately, is far from an integrated, coherent norm and so it is contentious to assert any prospect of the law as the ideal form that it should strive for, let alone what claims of secession might be subject to the law in the future. The future form of the international order could be either more centralised, such as a world government, or more piecemeal, such as a bunch of small,

[12] The principle is understood as follow: once a state *de facto* exists and gains the (international) legal entitlements equal to those of other existing, recognised states, it then acquires the right to freely determine *its own* political status and economic, social and cultural development. This is the alleged *external* right to self-determination protecting a state's autonomy in its domestic affairs. Based on this right, other states have the correlative duty not to intervene in this state's the domestic affairs. The current practices of international law recognise and endorse these right and duty positively. However, this implies huge neglect of internal self-determination that international law does not concern itself much with whether a group within a state can self-determine their collective matters, not be suppressed by the state. See Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995), p. 45; pp. 174-176.

decentralised states, and the necessity or importance of international recognition fluctuates accordingly. Based upon the extant relation between the international order and secession, IMR theorists can legitimate their stance that the right of secession should not undermine, but rather secure the very value of current international law. Yet this fact should not lead us to dismiss the significance of PMR for secession as a potential tool for improving the international order because, as previously pointed out, the institution (no matter what form of international law) is justified only in not recognising what morality requires of the right, rather than denying the justification or existence of the right. Only if non-recognition represents nothing or is of no moral significance can the right be 'squeezed out' without any concern at all. Such an issue will be the theme of the next subsection.

In summary, IMR advocates argue for the institutional nature of secession associated with a right to international recognition. Based upon such a conceptual connection, they further argue that the best account of the moral right to secede must be coherent with and serve the purpose of a higher norm (governing secession), thereby referring to international law. However, the right to secede does not necessarily include a right to international recognition. Even though the current international order conceives of international recognition as a necessary constitutive element, IMR theorists cannot demonstrate that the ideal form of international order must be characterised by such an element, let alone the relation with secession therein. Comparatively, the PMR camp holds a more universal and general position that secession should be understood primarily within a *de facto* statehood. Moreover, the PMR camp can accept its proposal being turned down justifiably by IMR, but further argue that legal non-recognition should produce a certain moral loss at the same time, which implies

some action-guiding force for our institution. Let me now proceed with such a moral loss argument.

1.2.3. The moral loss argument

How should we understand the outcome in which all reasoning for secession only establishes a moral right rather than one recognised by institutions? IMR regards this as, unproblematic, or that the putative moral right is not really a value we should pursue at all, given that the institution is justified in denying the recognition of the right. PMR theorists reply, however, that even if the law is justified in so doing, the justification or the non-recognition must come accompanied with regret, and that this has two implications: (1) the justification is achieved with the sacrifice of the right signifying certain moral loss, by which (2) it entails a normative, legitimate expectation that once the currently justified obstacle blocking the moral right is overcome, the legal system should recognise the right.

But what is moral loss exactly? I shall define 'moral loss' as something that occurs whenever a justified *pro-tanto* moral right is overridden by some other justified practical reasons. 'A right is pro-tanto', according to Danny Frederick, 'if and only if there are exceptional circumstances in which it is permissible to infringe it, even though it is impermissible to infringe it under normal circumstances.'[13] Moreover, the alleged practical reason is twofold. Either it can be identified in the contrast between ideal and non-ideal theory, by which it refers more precisely to full vs. partial compliance theory;[14] or it appears in the case of moral

[13] Danny Frederick, "Pro-Tanto Versus Absolute Rights," *Philosophical Forum* 45 (4) (2014): 375-394, 375.
[14] Based upon Valentini's conceptual analysis, the debate on ideal vs. non-ideal theory encompasses three main issues: (i) full compliance vs. partial compliance theory; (ii) utopian vs. realistic theory; (iii) end-state vs.

dilemma that conflicts of rights are the inescapable trade-off characterising our human lives. The former manifests how rights are specified in morally reasonable [15] circumstances, whereas the latter denotes the difficulty or complexity of judgement distinct from the former even though principles of right can be articulated through philosophical reasoning. Let me illustrate this.

First, suppose a primary right to secede is justified in the manner of PMR. What would happen if an institution, say the body of international law, refused to recognise it? For the sake of argument, allow me to simplify the account of the right as follows. Collective autonomy is a paramount moral value, explaining and justifying why we are averse to colonisation and tend to endorse democracy. Every (qualified) group is thus entitled to the right of political self-determination, by which a group of people have the right to organise their political affairs in accordance with their will, provided that they express their will explicitly and have the capacity to realise it without imposing injustice on other people. Forming a state of one's own is one way in which the right may be given effect, and with this in view we justify an expansive (moral) right of political self-determination, including the right to secede. Grounding secession on collective autonomy, each group is entitled to the pro-tanto right to secede if their will is explicitly expressed and their realisation does not impose injustice upon others.

transitional theory. See Laura Valentini, "Ideal vs. Non-Ideal Theory: A Conceptual Map," *Philosophy Compass* 7/9 (2012): 654–664.

[15] What is reasonableness? Generally speaking, Rawls says, 'the reasonable is viewed as a basic intuitive moral idea.' Scanlon further explains, 'a claim about what it is reasonable for a person to do presupposes a certain body of information and a certain range of reasons which are taken to be relevant, and goes on to make a claim about what these reasons, properly understood, in fact support.' So understood, the idea can be taken as the background condition for moral reasoning, under which people are entitled to moral agency, act on good faith and more importantly, are both subject and object of morality. Simply put, the idea asks us, particularly in collective action, to take other people's interests into account when we live with others. See John Rawls, *Justice as Fairness* (London: Harvard University Press, 2003), p. 82; T. M. Scanlon, *What We Owe to Each Other* (London: Harvard University Press, 2000), p. 192.

Given this simplified justification, the PMR camp argues, there is a general moral duty to secure the collective autonomy of each group, even when they seek to discharge it by secession. If we project an ideal, full compliance theory of international law as the place in which every agent follows what morality/justice requires, we do not have to worry about some realpolitik concerns (e.g. groups may abuse the right to secede or people are overly obsessed with nationalism or state sovereignty) and so should directly apply this moral right (as the primary right to secede) to each qualified group. In reality, however, we may concede from the direct application that, due to the above practical or prudential concerns, the existing non-ideal, partial compliance system of international law may at most recognise a remedial right to secede, or even no right at all. This difference between the ideal and non-ideal theory, however, should not be regarded as evidence that the justified moral value or the (primary) right lacks importance. Prompted by the ideal theory, we should measure the institutional judgement with a moral loss: the claimant's collective autonomy is justifiably sacrificed to some weightier reasons and we should bear in mind that once those reasons cease to apply, the claim to collective autonomy should be recognised by law. So understood, a moral loss emerges when (1) a given moral right is justified, which indicates some fundamental interests of the right-holder in need of protection; yet meanwhile (2) we fail to secure those moral interests when the institutions are justified in not protecting them through a legal means.

IMR advocates do not accept this moral loss argument and take it to be a mistaken view. Lefkowitz contends that unless the PMR camp can use IMR to construct an ideal theory of international law for the primary right to secede, we should not hold that fully just international law adheres to the primary right to secede. He concedes that IMR might agree

with such a prospect if it were to be established successfully. However, the proposal must come with 'an empirically informed argument regarding the motives, institutional structures, and institutional capacities that constitute a global normative order containing a primary right to secession'.[16] That is, he claims that without articulating a transitional (re-)form of international law upholding the right that is still based upon the current global order, composed of sovereign states with the horizontal normative order, the argument framed by PMR cannot ground the primary right to secede in (allegedly ideal) international law and thus the argument is merely conjecture. Lefkowitz, therefore, responds to the claim about moral loss that such a loss with respect to secession exists only if (1) the extant institutions should recognise the right but fail to do so; or (2) an ideal form of the institutions is justified in conferring the primary right to secede. In other words, if we could not demonstrate that the core value of extant international law should recognise the result of PMR for secession, no moral loss would occur; and if the proposals sketched by PMR camp cannot meet the empirical demand of IMR, their conclusion should not have any guiding force but be considered merely a conjecture, by which it indicates, again, no moral loss.

This interpretation of moral loss, however, is problematic in two senses. First, Lefkowitz confuses the significance of ideal vs. non-ideal theory delivered by PMR theorists, which is full vs. partial compliance, with the contrast between end-state and transitional theory. According to Valentini, the former is based upon two conditions: (1) all relevant agents follow what morality/justice requires; and (2) society, although resources are limited, is sufficiently, economically and socially developed to realise justice.[17] Ideal theory is thus predicated on

[16] Lefkowitz, "International Law," p.399.
[17] Valentini, "Ideal vs. Non-Ideal Theory"

these two conditions. Non-ideal theory, by contrast, is formed when the theoretical presumption does not satisfy either of the conditions. However, IMR's understanding of ideal vs. non-ideal theory is that (1)' ideal theory sets out an ultimate goal for institutional reform, whereas (2)' the non-ideal considers how the goal might be achieved in gradual steps based upon existing social conditions. PMR theorists deploy the former account to illustrate why we should subscribe to, say, the primary right to secede, and by what reasoning international law may be justified in recognising that right or not. They simply argue for the moral truth out of full compliance theorising and independent of international law and so recommend the law recognise this truth whenever the global condition is close to the theoretical conditions. The requirement from the IMR camp for PMR theorists to construct an ideal, applicable form of international law prior to a right of secession, however, mistakes the rationale underlying PMR, simply because the PMR camp does not base their justification upon IMR. That is, if PMR's original position does not take international recognition or international law as a necessary condition, there is no sense in demanding an ideally applicable form of international order from PMR theorists. The charge of mere conjecture is the product of such confusion.

Further, it is worth noting that IMR theorists do not reject all kinds of rights framed by PMR for international law. Basic human rights as the product of PMR, Buchanan argues, are the foundation of international law. So, why does the international law not recognise, on the one hand, both the primary right to secede and basic human rights as pro-tanto rights, yet on the other allow the latter to override the former when they conflict? The IMR camp might contend it is because the recognition of the former would undermine the safeguard to the latter, which are the foundation of the law. However, if both sides agree the priority of basic

human rights, it should not be difficulty to adjudicate between them. It seems more plausible to argue, from the perspective of existing states, that instability would prevail if international law recognises the primary right of secession. Yet such an argument is more like a reason of prudence against the current recognition rather than a valid denial of the justification of the right. If two rights are both morally justified, the moral loss argument wants to identify the emergence of the loss whenever one is justified in overriding the other. Given the two rights in question protect two distinctly different moral interests, namely collective autonomy and a basic, decent human life, we should understand that basic human rights override the right of secession at the expense of collective autonomy. This is exactly the moral loss at issue and it entails two conclusions: (1) not only do we need identify what moral values are at stake, but we must also provide a solid ground justifying why some need be sacrificed; and (2) we should have an appropriate response to a moral loss, such as compensation or some policy minimising the loss. In other words, if a justification is derived at expense of some value, there is surely some moral loss demanding an appropriate response.

A crucial point may be that IMR theorists do not construe the right of secession, or the value it aims to secure, as a fundamental constituent of international law, on the basis of which the right cannot be deemed as universal and general as the basic human rights and so should not be theorised by PMR. Since the IMR camp does not put them on a par with one another, the more fundamental (i.e. basic human rights) are justified and recognised pre-institutionally in shaping the institution, while other rights (say, the right to secede) must wait to be examined by and after the idealised institution. This method of theorisation implies a deeper methodological conviction called constructivism or the model-based approach, which is in contrast to PMR's, radical pluralism or principle-based approach. According to Christopher

Bertram, the former holds a belief that 'the practice of institutions in the actual world has some kind of constitutive significance for the kinds of normative principles that hold,'[18] by which a hypothetical society or institution should be firstly theorised as the ideal norm for the targeted institution; subsequently a set of principles should be articulated as a firm structure that the people within the institution should act upon. The latter approach refers to 'those moral and political theories that conceive of normative political theory as consisting in the application of some principle or principles to a particular subject, the social and political order, where those principles in some sense hold independently of that particular social and political order.'[19] G. A. Cohen further explains this position that,

> we determine principles that we are willing to endorse through an investigation of our individual normative judgements on particular cases, and while we allow that principles that are extensively supported by a wide range of individual judgements can override outlier judgements that contradict those principles, individual judgements retain a certain sovereignty.[20]

So understood, the conflict between IMR and PMR is more profound: whether we can prescribe our society or a given institution with a set of priority rules over the course of actions therein, by which it would not, according to Rawls, 'give contrary directives in particular types of cases' or create inconsistency of evaluating different principles in each type of case.[21] Since IMR theorists hold that we should construct such rules, they can *squeeze* out

[18] Christopher Bertram, "Realism, moralism, models and institutions," *Journal of International Political Theory* 12, (2) (2016): 185-199, p. 187.
[19] *Ibid*., 186.
[20] G. A. Cohen, *Rescuing Justice and Equality* (London: Harvard University Press, 2008), 4.
[21] John Rawls, *A Theory of Justice* (London: Harvard University Press, 1999), 30.

a value without a sense of the loss if it contradicts the priority rules. By contrast, the PMR camp is inclined to take many moral judgements as made with certain inevitable trade-offs, because principles of rights 'cannot all be satisfied all the time, nor do we have a method for systematically combining them.'[22] As this methodological dispute further relates to some metaethical issues such as value incommensurability, I will refrain from delving into it further. However, I believe we can draw on this deep methodological dispute to claim that if the contest were to go this deep, then simply pointing out the conceptual connection to international recognition, which is highly questionable as necessary for a claim to secede, would not be sufficient or convincing enough to dismiss the moral loss argument, let alone the validity of PMR for the right of secession. I therefore conclude that both PMR and IMR are important and necessary to articulate what morality or justice requires of the right, regardless of whether it is envisaged to be applicable to international order.

2. Balanced moral reasoning and the relevant criteria

If PMR cannot be simply dismissed as IMR theorists advocate, and IMR has its distinct role in articulating what rights an institution should recognise, then the two moral reasonings should both be necessary for a tenable account of the right to secede. In this section, I shall argue that Weinstock's proposal meets the demand for a balanced moral reasoning for secession, and then defend his method via a critique of the criteria articulated by Buchanan. Weinstock proposes his methodology of a normative theory of secession as a two-stage view, composed of the following basic questions:

[22] Cohen, *Rescuing Justice*, p.4.

(1) The abstract question: is there a moral right for a group to secede from a larger political association, and if so, what are its grounds?
(2) The agency question: under what circumstances is it appropriate for a group to exercise the right in question?
(3) The identity question: which kinds of groups can avail themselves of the right to secede?
(4) The internal legal question: should a political association legally provide for the right to secede, and if so, what form should such a legal provision take?
(5) The external legal question: should the international law recognise which governs the relations among sovereign states provide for the right to secede, and if so, what form should this recognition take?
(6) The territorial question: does a group which exercises its right to secede have a right to the territory it inhabits simply in virtue of its having decided to secede?[23]

This is called the two-stage view because it follows the basic framework of PMR that an account of a moral right should be distinguished from its legal application. Questions (1) to (3), and (6) are categorised as considerations bearing on the establishment of a moral right to secede, whereas questions (4) & (5) refer to whether a legal system should acknowledge the right.[24] IMR at the second stage should take the consequence of the first stage/PMR into account, and yet each piece of theorising follows its own reasoning even if the conclusions

[23] Weinstock, "Constitutionalizing," pp. 182-83.
[24] Weinstock himself does not say explicitly that question (6) is part of the first stage, namely the moral, abstract consideration. However, as I explained in my fundamental framework positing justified secession on the triangular relationship between states, subjects and territories, the concern of question (6) is necessary in any account of morally justified secession. In addition, I believe a plausible account of territorial rights is mostly framed by PMR instead of IMR. Based on these two reasons, I classify the sixth question into the abstract reasoning for the moral right to secede.

entailed contradict each other. By contrast, the one-stage view is what proponents of IMR advocate, according to which prudence and what institutions in question should properly react are taken to be the primary reasoning for granting secession or not. Based upon Weinstock's six basic questions, IMR would prioritise question (5) and/or (4) in the sense that the answers to the other questions are mostly conditioned by the answers to questions (4) and (5). Since the six questions all follow the same moral reasoning, the answers should be all coherent. However, as illustrated in the previous section, we have sufficient reasons against such an approach.

Weinstock thinks that only the two-stage view has the capacity to safeguard the significance of both moral and legal rights and to identify what moral loss may emerge. That is, he argues that the view is superior in practice because the assessment of its legal application can be more comprehensive, as the institutions in question are informed by and have weighed up *the moral imperative from the justification of the right, the consequences determining whether to render legal provision for the right, and what unreasonable obstacle infringes the fulfilment of the right*. As we could distinguish what infringes the prevalence of rights from what sorts of actions are truly valuable and also acknowledge the action-guiding force of moral loss, the institutions not only perform their ordinary function, namely dispute resolution, but also sustain the commitment to respect for rights by diminishing these obstacles. This shows that the two-stage view has a more comprehensive understanding of the purposes of institutions, according to which they are designed not only to settle public disputes but also to orient people's moral conceptions and form a proper ranking of values.

Would proponents of IMR accept the conclusion that their one-stage view is methodologically inferior to the two-stage view? Let me examine Weinstock's method through the lens of five criteria that Buchanan, who is an IMR advocate, proposes to evaluate the quality of a normative theory of secession; concomitantly I shall critique the soundness of those criteria. The standards are:

(1) a cogent account of the territorial claim: a theory of secession should explain why a qualified claimant of secession can take over the claimed land legitimately;

(2) the virtue of progressive conservatism: the principles proposed should improve the existing system at issue but not at the expense of sabotaging the very virtues of the system. Alternatively, other things being equal, if two competing theories both claim to improve the extant situation, but one achieves it by a radical reform of the system, then we reject the one with radical reform;

(3) the virtue of moral accessibility: the theory worthy of more praise should create the least moral cost when implementing;

(4) the virtue of incentive compatibility: likewise, the theory worth following should minimise perverse incentives as many as possible; and

(5) the virtue of moral convergence: the theory determined should reflect high likelihood of compliance; that is, the more people of different ethical backgrounds accept it, the more valuable the theory is.[25]

It is noticeable that the two-stage view is satisfied with the first criterion by articulating its sixth question. Confronting the remaining theoretical virtues, let me summarise them in

[25] Buchanan, *Justice*, pp. 348-50.

below. Progressive conservatism refers to how to advance the virtues of the system. Moral accessibility indicates the transitional cost/benefit of arriving at the aims proposed. Incentive compatibility demands the avoidance of negative and the promotion of positive side effects. Moral convergence focuses on the possibility of voluntary allegiance, which relates to a psychological concern about how far the principles proposed are from the ethical backgrounds of people in question. I shall argue that the two-stage view is superior in virtue of its more advanced performance on the second and the fifth virtue because it could provide a broader and subtler view of what should be improved; while rejecting the third and the fourth, since a normative theory of secession alone cannot complete such a calculation.

Let me assume or clarify that the conclusion derived from the two-stage view is a synthesis of IMR and PMR, by which I mean a mixed proposal that, say if the consequence of either contradicts the other (for the result of PMR may not be coherent with IMR), a supplementary or reconciliatory account of principles of secession should be given, according to which we know why the result of PMR is not recognised by IMR and more importantly, what impact or prospect would occur because of such non-recognition. Otherwise, the method is no more than a random joining together of IMR and PMR. As I have illustrated why PMR is indispensable for secession, here I focus on how this supplementary account invoked by PMR does a better job on progressive conservatism and moral convergence. First, through the comparison between the two stages (i.e. PMR and IMR), progressive conservatism can avoid (institutional) status quo bias by looking at the issue from the perspective of morality; that is, it can refresh or adjust the understanding of extant institutional virtues. Margaret Moore criticises IMR, writing that 'it seems to give too much credence to those who do not wish to

recognize the legitimate aspirations of groups in society.'[26] She then demonstrates the status quo bias in IMR by claiming that political rights for women and no right to slavery would both have failed in the eighteenth and nineteenth centuries if the virtues of the institutions at that time had been secured. If there is a difference between what morality requires and what best serves a justified norm, a fitting response is to ask why the norm does not follow what morality requires, rather than to label the former unrealistic or idealistic. By so doing, we check whether the norm devised contains status quo bias; subsequently, we whether explore what causes status quo bias and consider whether it should be tackled by legal means. Finally, if the difference between the two stages is justified, the theory should render an adequate response to the moral loss. Conversely, an account of the moral right to secede can also be informed by common practices. It is not merely a matter of feasibility but also what morally reasonable factors PMR theorists may underestimate or overlook. If we need to stay away from the defect of a value theory of political self-determination identified by Lefkowitz, PMR can address the problem by showing that the virtues of institutions do flourish by promoting self-determination. The virtue of progressive conservatism should concern both progressives and conservatives for the right reasons, rather than being partial to the former or the latter. The two-stage view can provide equilibrium, whereas the one-stage view lacks the theoretical resources to tackle the potential status quo bias.

Second, the two-stage view is more able to support the right reasonable or genuine consensus of different ethical backgrounds (viz. moral convergence). Buchanan contends that, because existing international law lacks a mechanism with vertical power, voluntary allegiance

[26] Margaret Moore, *The Ethics of Nationalism* (Oxford: Oxford University Press, 2001), p. 206.

becomes a necessary demand for an account of justified secession. Putting aside whether international recognition is still necessary to the theorisation of the right, we should not ignore what forms the allegiance. In particular, we should not conceive the condition simply as what a majority of states agree upon. This reflects the worry that moral convergence may simply reflect a tyranny of the majority. Of course, the worry may be exaggerated as the convergence in question has to be moral. The one-stage view, however, is indeed deficient in making the conceptual distinction between what norm (governing secession) should be commonly upheld and what justified form of secession should be commonly followed, without which a logical mistake would occur easily. In other words, there a real categorical difference between *the consensus on the norm* (happening to govern secession) and *the consensus on a justified form of secession*; and the reason for the former should not be confused with the latter. Given that the one-stage view reduces the latter to the former, how can it account for the circumstance under which the latter gains more moral convergence than the former? Moreover, it is a dubious position that the former account could gain more compliance in light of moral convergence rather than the enforcement or some unjustified convention within the norm.

Finally, the third and the fourth criteria (i.e. moral accessibility and incentive compatibility) should not determine the value of a normative theory of secession. This echoes the observation of Hsin-wen Lee that Buchanan seems to confound *moral* values of political theory with its *practical* values; the realisation of the former brings our life more close to morality whereas the measure of the latter is how close a reform is to the current

circumstance or how much effort we have to pay for a reform.[27] Needless to say, all valid theories of secession should attend to moral accessibility and step away from perverse incentives. Yet it is the *measure* of moral cost that creates concern, not how close the principles proposed are to the current system. Moreover, we care not just about the quantity but also about the quality of moral cost. That means: firstly, deriving a proper evaluation of moral cost is quite a different enterprise that refers to a mixed endeavour of empirical and normative research, by which neither the one-stage view nor its opponent has the theoretical resource to complete the study alone; secondly, while the one-stage view seems to base its advantage of moral accessibility on how close the principles derived are to the current norm, the two-stage view can also argue that it is better at identifying the principles with high moral quality, on which the moral value it pursues, once fulfilled, can either override or compensate the transitional moral cost. To settle the dispute, devising non-ideal or transitional theories is far from enough, because such theorizing simply articulates a temporarily transitional policy most close to ours (though it claims to advance the current situation). Empirical study is required to specify the measure of moral values/rights, by which we can quantify the extent of certain rights violation or realisation. The same defect also casts doubt on the virtue of incentive compatibility. Altman and Wellman have noted that what (quality of) incentives there would be is open to the interpretation of empirical data, which means incentive-based arguments made by normative theorists can at best be conducive to agnosticism.[28] For instance, Lefkowitz sides with Buchanan as an IMR theorist; and yet he argues for a precautionary approach based upon incentive compatibility to support the current practice of international law, namely a ban on any kind of unilateral secession. He argues that

[27] Hsin-wen Lee, "Institutional Morality and the Principle of National Self-Determination," *Philosophical Studies* 172 (1) (2015): 207-26, p. 214.
[28] Altman and Wellman, *A Liberal Theory*, pp. 63-66.

secession cannot truly solve the problem of civil war, so the prospect of a remedial right to secede aiming at peace and human rights is dim. He also concurs with Donald Horowitz that the recognition of the remedial right to secede may cause a perverse incentive that motivates secessionist leaders to 'welcome' violent crackdown.[29] This shows again that get-the-incentives-right arguments elaborated by normative theorists are quite fragile and their validity depends on a proper (empirical) measure of their alleged perverse incentives. Without the verification of social scientists, those conjectures on incentive compatibility are merely pseudo-evidence rationalising any methodology as to secession. I thus conclude that moral accessibility and incentive compatibility are not the necessary and plausible criteria determining the validity and soundness of a normative theory of secession, because the two criteria requires a collaborative workshop with empiricists.

3. Conclusion

In this chapter, I analysed the prevailing methodological debate on normative theories of secession and argued that pre-institutional moral reasoning is not only necessary but also can be helpful for institutional moral reasoning; by which, a better method of developing the theory should be the alleged two-stage view proposed by Daniel Weinstock. PMR is indispensable and useful because, despite that IMR is right to point out the significance of offering an account of the right to secede best coherent with the institutions governing the right, the claim that the form of the right should always be subject to the form of the institutions is not tenable. For international recognition just happens to be one of the claims

[29] Lefkowitz, "International Law," pp.407-09.

of secession in our current world, which shows that secession is not inherently an international legal concept. For the non-recognition of the right determined though justifiably by the relevant institutions should be reckoned as a moral loss that indicates the failure of our extant institutional scheme to meet what morality demands and thus what legitimate reform we could have for the institutions. Based upon these reasons, the two-stage view which takes the benefits of PMR and IMR both into account is then preferred. To further defend the method, I argued that it not only meets the demand for a cogent account of the territorial claim but also has better performance in moral progressivism and moral convergence. Although the method may be criticised to not satisfy moral accessibility and incentive compatibility, I have illustrated that these two criteria are not adequate for normative theorising and so the charge is indeterminant because such evaluation requires the support of empirical evidence.

Chapter 3: Territorial Rights for Two Identities (1)

0. Preface

In this chapter and the next I argue for a synthesis of Moore's and Stilz's proposals for territorial rights. After examining their proposals respectively (in Chapter 3), I shall propose a new account of territorial rights (in Chapter 4) based upon the combination of their theories, which explains (1) under what conditions a state can justify its claim to territorial rights; and (2) how such a claim can be held sustainably by the state, in the sense that a larger state-wide identity harmonises with (collective) identities of subgroups within that territory.

There are two ways of understanding what is denoted by the term 'subgroup' and their connection to the land they live on. Firstly, the establishment of modern states was achieved through domination, suppression, or colonisation of various peoples. These could be indigenous people who used to follow tribal or nomadic lifestyle, people who lost their previous political institutions due to the collapse of an empire, or those who were unable to defend their homes and were subsequently conquered. Modern states thus often accommodate subgroups whose different collective identities derive from cultural forms that predate the state. Secondly, some subgroups with ethnicities, cultures or political ideologies that differ from those of the majority or rulers may assert their collective identity in the face of partial policies that disadvantage them and/or their group interests. For instance, before Japanese colonisation, the ethnic Han in Taiwan did not hold a common Han identity, but were divided into different small communities according to their origins. Japanese

colonisation initiated the formation of a collective identity within this loosely organised subgroup, namely Taiwanese, by lumping them together and inflicting segregation and discrimination on them as a group that had not previously identified themselves with the label 'Taiwanese'. In this sense, the state may induce certain subgroups to perceive themselves as different from others by virtue of unequal, unjust policies. Therefore, in contrast to a larger state-wide identity normally supported by the ruler (e.g. British state), there are subgroups within states territories (e.g. Scottish people) either affiliated to their own collective identity alone, or holding both kinds of identity at the same time. A plausible account of territorial rights needs to accommodate these two identities.

One may wonder why or how the idea of territorial rights is related to collective identity, whether referring to the rights of a subgroup or a collective right shared by a group of citizens as a whole. Two points are relevant here. First, the justification of territorial rights means that the state is justified in holding jurisdictional authority over the territory it legitimately occupies. This normative concern over state legitimacy explores how the state should be organised in order to be entitled to these rights. The most straightforward answer is that the state's function should satisfy what justice requires. As such, the state should establish social order, provide basic infrastructure that every citizen is able to access, and distribute public goods in a just fashion. Yet this purely functionalist idea of justice is insufficient to justify the holding of territorial rights, because it generates a perverse incentive for 'benevolent' annexation. This reflects that, secondly, collective self-determination should be considered, thus leading us in turn to examine the importance of collective identity/autonomy. Benevolent annexation will occur if the justification of territorial rights depends merely on whether the state discharges its functional duties (of justice). The pure functionalist view does

not prevent a circumstance in which a state can legitimately coerce people living outside its territory if such an annexation both protects their basic human rights and secures their lifestyles. The often-cited example is the scenario in which the Allied powers continued to occupy Nazi Germany after the Second World War and settle their governments there to carve up Germany permanently. Such an annexation would leave most parts of the community intact. However, the German people were subject to foreign authorities. To avoid this wrong, subjects' self-determination must be given due respect, which can surely be understood by appeal to their collective identity.

Yet why should the justification of territorial rights concern itself with state-wide identity and the identity of subgroups? Although territorial rights should take self-determination as their aim and justification, the way a state operates generates an essentially normative tension between ruled and ruler. Rousseau conceives this tension as the conflict between personal autonomy and state authority. Alongside this, secession reflects another conflict between *identity imposed on all subjects* (i.e. larger, state-wide identity) and *the identity of each subgroup as a valid claimant to their collective autonomy*. The imposition of state-wide identity by many or the ruler is highly problematic, because subgroups may find it difficult to accept the identity imposed. This raises a question about the "self" in self-determination, viz. when territorial rights are exercised, how states ensure that in being ruled, people also rule themselves, given that the identity of the self in question can be unclear? Specifically, when different groups compete for state apparatus as a means to further their identity-based interests, what policies can accommodate the affirmation of all types of identity? In many cases, the result will only represent the culture and value of the majority. Or, when a minority seizes power, it may try to utilise political institutions to serve their own conception of 'good'

and so coerce others into compliance. Again, a plausible account of territorial rights should address the potential conflict between these two identities.

Therefore, territorial rights should (1) account for both kinds of collective identity; and (2) be able to reconcile them. I shall argue that both Moore's and Stilz's theories address these concerns, although neither tackles them satisfactorily. That is, in the first section of this chapter, it will be shown that Moore's proposal for territorial rights has the advantage of accounting for the collective identity of subgroups whose self-determination should be secured by the state. However, it lacks an explicit account that integrates all subgroups into a unit confirming that the state is acting as a vehicle for the self-determination of every citizen. In section 2, Stilz overcomes this by listing the conditions in which the state can plausibly claim that subjects' self-determination has been achieved, whereby we derive the criteria for how a state should impose its state-wide identity, even though Stilz's theory does not give subgroups' collective autonomy/identity a significant role. From the mutually beneficial relationship between Moore's and Stilz's accounts, a new account can emerge, keeping their strengths and overcoming their weaknesses. This revised, synthetic version will be articulated in the next chapter, as the foundation of my proposal for justified secession. Because this chapter is in the process of deriving that proposal, the implication of the analysis will be sketched in the next chapter as the introduction.

1. Moore's account of territorial rights

Margaret Moore articulates an account of territorial rights based upon the value of collective self-determination and (group) identity. The core of the identity argument refers to the notion of legitimate expectation, which squares with the interest in stability of place. Let me explain the account in the following order: (1) what entity is justified in holding the rights; (2) how the rights-holder is attached to their claimed territory; and (3) why we should accept the rights as binding. In closing the section, I shall identify some disadvantages of the account.

1.1. Who holds territorial rights

Moore advocates that 'a [self-determining] people… has jurisdictional rights… over land on which members of the group resides, if the group is in legitimate occupancy of the land.'[1] These self-determining people have a *shared group identity, the capacity to form and sustain political institutions, and a history of political cooperation*. Members must share a notion of themselves as a group, by which they not only identify with co-members subjectively, but also participate in a shared political goal or project; they must have the capacity to establish and maintain political institutions in order to complete a common political project in a self-determining way; and they must possess a history of political cooperation, such as participation in state or substate institutions, or in a resistance movement. These are taken as objective credentials of solidarity and an ability to uphold society, and taken together are necessary and sufficient to locate the holder of territorial rights (i.e. the self-determining

[1] Margaret Moore, *A Political Theory of Territory* (Oxford: Oxford University Press, 2015), p. 35.

people) as the ultimate source of jurisdictional authority. Hence, the group is entitled to demand institutional resources from the state to realise their self-determination. Moore bases this conception of a group people on the identity argument, which can be further understood in terms of (1) how these people are attached to the land they occupy; and (2) how relationships between members of the people as weighty moral goods form a legitimate expectation underpinning the territorial entitlement. Let me explain these ideas in turn.

1.2. How political territory emerges

Moore's territorial attachment is a necessary condition of holding territorial rights and is developed in a two-stage process: (1) individual rights of residency; and (2) group rights of occupancy. The former is defined as 'a liberty right to settle in an unoccupied area, and a right of non-dispossession, a right to remain, at liberty, in one's own home and community and not to be removed from the place of one's projects, aims, and relationships.'[2] This simply indicates that any individual has the right to live in a place if that residency does not wrong others (e.g. expulsion of current residents, stealing their land, etc.); and once the residency is granted, a place-related relationship is established by and spread out from the individual by virtue of their life-plan and attachment (family, occupation, etc.) rooted in that place. This produces a weighty moral interest, placing others under a duty to respect their residency, which amounts to respect for continuous residence and a right not to be evicted from the place without a weightier moral reason. In addition, such rights should not be misconceived as only applicable to property-owners (viz. anyone holding residency in virtue of their

[2] *Ibid*., p. 36.

possession of land or houses as property). Instead, the rights apply to anyone who has formed their life-plan and social relationships around the place or community it lives in. That is to say, homeless people or foreigners in permanent residence are also entitled to these rights.

These rights are not the same as, nor do they entail, the holding of territorial rights, for the right to residency falls short of creating social or legal institutions. To meet this demand, the rights-holder must also *occupy* the land legitimately. Here, occupancy implies more moral force than residency. For example, a legitimate occupant is entitled to dispose of the land at liberty, whereas a mere resident, say a tenant, cannot sell or reconstruct land or house at will. That is, if a group holds territorial rights to a particular land, given that the rights entitle them to reform the landscape and create their own community with common jurisdiction free from interference, the rights-holder must also legitimate their occupancy of the land. As such, Moore enshrines group rights of occupancy with these two propositions: (1) the occupancy rights amount to 'a collective right which a group may have, over and above the individual residency rights of its members, a right to control the land or geographical area on which the people live and in which they have a special interest; and help to define the domain of residency rights';[3] and (2) individual rights of residency can entail such group rights, given that multiple residences intertwine and produce certain communal relationship goods that connect those with residency rights firmly to each other and the land, transforming them into a community. Thus, we can conclude that it is the group, rather than a bunch of individuals, holding the occupancy right. Let me account for this as follow.

[3] *Ibid*. I will further explain how such a group, namely a self-determining people, holds the collective right to occupancy in Chapter 6 when I specify how a legitimate claimant to secession, by becoming a self-determining people before making such a claim, bears the right of secession.

First, as one starts to live in a certain area and develops one's social life therein, one's life-plan and well-being not only depend on but also are conditioned by the (social) relationships within the community in which one lives. For instance, a Catholic priest who has taken vows to preach the gospel must do his job and so develop a life either in a Catholic community or one that is not opposed to his mission. His life-plan is closely attached to his priesthood. The fact of residency thus generates a structure of social relationships, giving rise to a strong connection to the community and the meaning of residents' lives. Such a structure is rooted in the community and becomes a fundamental component of, and context for, one's life experience. It not only specifies the geographical domain of occupancy, but also amounts to two weighty moral interests, namely (1) being part of community should not be arbitrarily undermined; and (2) (necessary) participation in communal life means that the community as a whole can claim institutional resources required to sustain the social conventions already developed, or to cultivate some common life project.[4] Second, these interests should be held by collectives, not just an aggregation of individuals, because they can only be accounted for with reference to the community as a whole. Relationship goods inherent in a community are of two kinds: *generic*, amounting to the need in basic justice or provision of public facilities and impartial legal systems (such goods would not bind individuals with a certain community); and *relationship-dependent* goods. The fulfilment of the goods depends on the support of members, rather than of any group of individuals, because a community normally produces a common life project reflecting the members' anticipation or understanding of the community. That is, when a community is forged, social cooperation binds the co-operators together to consider or address certain collective issues, such as how the community should be developed

[4] I shall put aside the concern about the right to exclude non-members in Moore's account, although I fully recognise this concern may arise when the collective right of occupancy is justified.

in the future, how public affairs should be determined or addressed, or how a non-member might become a member, and so on. Resolving these (group-based) concerns, institutional resource is necessary. Moreover, the community would further foster a shared group identity alongside the development, implying their shared understanding of social practices common in the community, which conditions the members' personal life plans. This means, alternatively, that social practices have to be carried out by those appreciating and realising the meaning of the practices, i.e. the group members. Such a requirement denotes Jonathan Seglow's idea of associative duties, according to which relationship-dependent goods are the normative basis of such duties and the duties are such that 'each participant [i.e. each member] must be both an agent and a beneficiary for [dependant] relationship goods to arise'.[5] In other words, whenever a community or group forges a common group identity, the members produce not only relationship-dependent goods, but also the associative duties obligating the members to discharge them (provided that the duties are consistent with other moral principles). Protecting the community, therefore, amounts to the moral demand of discharging the associative duties and so requires institutional resource.

In addition, given that members have a duty to uphold their community, they must also work to secure the stability of the area in which the community is situated. That is, members of a community should be allowed stable occupancy in the place they live on in order to develop and uphold the community. This is not merely by virtue of their individual interest in building a stable life in a stable place, but also of the (group) interest in holding a stable form of community, protecting their group identity. These two kinds of interest, while jointly held by

[5] Jonathan Seglow, *Defending Associative Duties* (Oxon: Routledge, 2013), p. 30.

a group in legitimate occupation, generate legitimate expectations of political institutions self-determining their collective prospects *on a certain area* and consequently, justify their hold of territorial rights. Even though this inference is based much upon certain historical facts of residency, occupancy, and group identity, it still manifests the idea of legitimate expectation by giving rise to a future-oriented claim to stability of place and security of communal goods. That is to say, as Moore says, self-determining people need territorial rights because 'they have developed a symbiotic relationship with their environment, which is not just a moment by moment relationship, but involves planning ahead in the expectation that the plans can be brought to fruition.'[6] Based on the argument above, we can conclude the following: provided that individual rights of residency are justified, we must also confer group rights of occupancy on a community in which individuals have rights to reside, and who have formed a group identity; otherwise, the community may suffer arbitrary expulsion, violating their individual rights of residency.

Now it is clearer why a self-determining people must meet the three conditions mentioned above to hold territorial rights. First, shared group identity helps individuate the group from other groups because, as shown by the identity argument, a group eligible to claim territorial rights must first form a community in which co-members identify with each other. Given that identification with or relationship to a particular community aspiring to self-determination is a primary good entitled to protection, shared group identity becomes the first and foremost criterion. Secondly, in order to legitimise a group's occupation of a territory, i.e. whether their attachment to the land and community is real, we need to examine their history of political

[6] Margaret Moore, 'Legitimate Expectations and Land', *Moral Philosophy and Politics* 2017; 2: 229-55, p. 244.

cooperation. Finally, despite the fact that the aforementioned conditions may suffice to produce a legitimate expectation to control political institutions, the capacity to form and maintain such institutions is also necessary if the group wants to manage them in a self-determining manner.[7]

1.3. Examination of the account

However, Moore's account of territorial rights is not without flaws. I shall evaluate it in accordance with the criteria set out in the preface to this chapter, namely that territorial rights should (1) account for both kinds of collective identity (i.e. state-wide and that of subgroups); and (2) be able to facilitate their reconciliation. I shall contend that, firstly, the theory has a problem of *under-inclusiveness* in its account of for uninhabited lands and in the case where certain individuals (as subjects) show no signs of identification with any particular self-determining group. Secondly, if the idea of territorial rights is group-based (i.e. group rights), it may create some *unwarranted marginalisation of outsiders* (e.g. immigrants) by drawing a distinction between homeland and non-homeland peoples. Thirdly, the theory fails to provide a strong reason for the existing form of territorial sovereignty or against some cosmopolitan reform (such as a world government). That is, Moore's proposal cannot delineate convincingly why the existing self-determining peoples have to subject themselves to the current states rather than others or a world government. Given that Moore frames her theory primarily in terms of group identity/affiliation, this *failure to account for a larger state-wide identity* imposed by the state, as I shall point out, is caused by a gap (in terms of

[7] The concern about the group agency of such a self-determining people will be delineated in Chapter 6, as I will deploy this idea of people to qualify my account of claimant to secession and how they legitimate their claim.

scope) between the justification of state territory and Moore's account of territorial rights, because Moore does not explain explicitly how the state acts as a vehicle of self-determination for its people.

Let me begin with the first problem of under-inclusiveness. As I have illustrated, territorial rights are conferred on self-determining people if and only if the people have a shared group identity, a history of political cooperation and the capacity to form political institutions. These conditions also satisfy Moore's account of territorial attachment. Under such an account, the rights are eventually held by the people through integrating its members with the same residency and same group identity. This then produces the first kind of under-inclusiveness. That is, it apparently ignores the existence of some peculiar individuals who hold either no group identity at all or only the wider, nationwide identity, thereby undermining Moore's account of territorial rights. The former kind of people, such as a group of anarchists, would make the Moorean state territory like a Swiss cheese, given that their residency falls short of forming a self-determining people and thereby legitimate occupancy. This is what Moore calls 'the problem of individual dissenters', in which there is always a small number of individuals (say anarchists), who, while intermingling with a particular group, do not share the group identity of their community.[8] In order to counter such a problem, Moore is correct to clarify and remind us that territorial rights are held by collectives instead of individuals. Therefore, dissenters living within a community cannot challenge the people's holding of territorial rights, because, as illustrated, only rights to occupancy, rather than the right of residency, can legitimate territorial rights. While individual dissenters fall short of forming a self-determining

[8] Moore, (2015), p. 62. See also Kolers who also shares this under-inclusive problem. Avery Kolers, "Locating the people," *Critical Review of International Social and Political Philosophy*, (2018): 782-789.

people grounded in a certain land, producing associative duties and thereby rights to occupancy, their residency does not make a territory legitimately claimed by a self-determining people piecemeal. However, the problem may escalate when the anarchists occupy a certain area not claimed by any self-determining people (but still within the boundary of state territory), in which case there is a concern as to how the state justifies its territorial rights to that particular swathe of land. Given that the anarchists may not satisfy Moore's account of either a self-determining people or territorial attachment, that piece of land appears to be a 'loophole' within state territory and therefore the problem of individual dissidents still undermines Moore's account.

The second kind of under-inclusiveness (i.e. settlement of unoccupied land) is more problematic as, in Moore's account, there should be grounds on which the state can extend its jurisdictional authority to unoccupied land within its territory.[9] That is to say, given that state territory inevitably includes unsettled land, Moore fails to articulate the whole story of state's jurisdictional authority if we grant a state control over those lands. Moore concedes that her peoplehood and self-determination account cannot be the basis of such authority. In addition, there is a difference between the boundaries of territory that a state can claim legitimately and her account of territorial rights. Having made clear that she considers some justification such as the principle of *terra nullius* untenable, she then concludes with the example of the Arctic in Canada, noting that 'the Canadian state is in a kind of *fiduciary* relationship with the rest of humanity to keep the fragile Arctic from being exploited, in the absence of strong international agencies capable of doing the job.'[10] The situation of

[9] Catala raises the same concern as well. See Amandine Catala, "Contested territories and corrective justice," *Critical Review of International Social and Political Philosophy*, (2018): 790-797.
[10] Margaret Moore, "Reply to critics," *Critical Review of International Social and Political Philosophy*, (2018):806-

unpopulated lands thus represents a task of common humanity that should not just be borne by certain states geographically proximate to those lands. Sound as it may be, this reminder may be easily forgotten when states are weighing between carrying out the protection of common resources collaboratively and moving new settlers to land that is unsettled. The latter policy not only satisfies Moore's approach to territorial rights but also states' ambition of expansionism. In other words, if we did reach a consensus that a solid ground for states' jurisdictional authority should be established upon collective occupancy, we would merely encourage states to move their subjects to unoccupied land, just as Russia is doing in Siberia or China in Xinjiang. This would amount to the creation of a perverse incentive for enforced migration/resettlement.[11] Therefore, we must search for a way to improve Moore's proposal for territorial rights.

The second disadvantage of Moore's theory, argued by Stilz, constitutes an undue marginalisation of outsiders that disrespects their personal or collective autonomy (though the treatment may not be unjust). It is because the account, while construing the occupancy (or territorial) rights as 'group' rights, inevitably draws a distinct line between homeland and non-homeland peoples and so may undermine some rights of the latter groups.[12] For instance,

817, p. 814.

[11] Michael Walzer raises a similar concern in the example of the well-known White Australia policy. He points out that the argument of state territory based upon the alleged membership goods (such as Moore's) has huge limitations in terms of the legitimate scope of state territory. That is, given that unpopulated lands are not necessary to the fulfilment of membership goods, states' claim to those lands can be easily and justifiably turned down by 'the claims of necessitous strangers' such as refugees or immigrants from over-populated countries. He thus concludes that the White Australia policy faces two radical choices: 'its members could yield land for the sake of homogeneity, or they could give up homogeneity (agree to the creation of a multiracial society) for the sake of the land [namely the whole of Australia]'. See Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), 46-51.

[12] Anna Stilz, *Territorial Sovereignty* (Oxford, OUP, 2019), pp. 53-4. For a similar concern, refer also to Joseph H. Caren, 'The limits of collective self-determination,' *Critical Review of International Social and Political Philosophy*, (2018): 774-781.

a group of immigrants may be forced to alter their cultural expression in public, say as a result of a burka ban, simply because the homeland people does not regard that such cultural expression matches with or helps carry out their associative duties. This worry can be reformulated in terms of the argument as follow. First, given that a self-determining people successfully illustrates their (individual) residency rights and collective occupancy rights to certain land, they are entitled as a whole to the territorial rights to that particular land. Call this group also a homeland people. Second, holding territorial rights entitles the rights-holder with a jurisdictional authority over a particular territory. And thirdly, one implication of the group-holding is that any resident not identified with the homeland group in question would fall short of being a constituent of the jurisdictional authority. Therefore, fourthly, it seems plausible to legislate a policy enhancing the collective self-determination of the homeland people but constraining others provided that the policy is not unjust.

This problem could be properly addressed if there existed an impartial arbiter adjudicating such matters of collective self-determination regardless of who comes first. The state no doubt plays this role. Moore could thus rebut the charge by saying that her theory on the one hand simply explicates how a state derives its hold of territorial rights; and on the other, the alleged non-homeland people would be part of the jurisdictional authority once a state-wide identity were created. That is, whenever most subjects of a state meet the conditions of being a self-determining people, their commonly-held political identity should be construed as a state-wide identity and so the subjects as a whole can claim the jurisdictional authority over the whole state territory. Hence a group-based form of occupancy rights would no longer produce the marginalisation of outsiders. However, I shall argue that, when taking all the conditions into account and/or applying them to how such matters play out in reality, most

state-wide identities will fail to meet this demand and there will then be no such identity. This then reflects the third problem of Moore's proposal for territorial rights, namely the failure to account for larger state-wide identities imposed by states.

It might be good to begin with how Stilz understands this failure. She argues that Moore's account of self-determining people is insufficient to dismiss cosmopolitan scepticism whose adherents 'tend to think that our modern system of separate bounded communities is one that we should be working to overcome, in favour of a more global system of governance'.[13] I elaborate on this conclusion below. At first glance, Moore does advance a justification for collective self-determination according to which the people requires necessary institutional resources for the fulfilment of their associative duties. We bestow territorial rights on such a group for this reason. Nevertheless, this aspiration to self-determination could be carried out in various forms, and not just through existing states, so long as the rights are secured successfully. In other words, if a given people's interests in self-determination can be realised by a world government or other states, for what reason should it continue to associate with the existing state? The people's consent seems to be a possible answer. But since Moore's idea of territorial rights is not based upon such a norm, she has to provide a convincing reason against this kind of scepticism from within her own theoretical perspective. Given that her theory revolves around the normativity of group identity, I will explore how Moore's account of territorial rights may have formulated a state-wide identity.

[13] Stilz, (2019), p.29.

As pointed out in the preface, state-wide identity is imposed on subjects by whomever seizes state apparatus. This draws our attention to at least two fundamental moral concerns. The first is the legitimacy of the imposition: under what condition a state is justified in embarking on this state-building project. Second, a justification for imposing such an identity is necessary; that is, we should develop a moral principle for this project according to which subjects' original identities (of a subgroup or an individual) would not be erased by the imposition. Returning to our concern about legitimacy, Moore's proposal is unsatisfactory because almost all state-wide identities are an after-effect of state-building, rather than the other way around; that is to say, Moore's identity argument requires that the emergence of a state-wide identity precedes a state-wide identity-building project, which is something that has rarely happened. Why so? Recall that one of the conditions of being a self-determining people was *a history of cooperation*. Grouping the subjects of a state into a single collective containing many subgroups who do not share a history of cooperation, but rather of conflict with or suffering under a dominant majority or a ruler, means that they may be willing (although reluctant), to join a state not because of a history of cooperation nor because of common group identity, but rather because of a legitimate expectation that this is a compromise under which they will gain more benefits than they now do. This could either be because the agreement offered by the ruler is attractive or the costs of resistance will be unbearable. Both of these ideas indicate that states normally have no such people qua group with a commonly-held state-wide identity and history of cooperation before the promulgation of a state-building project. I thus conclude that the criterion for the people set up by Moore is over-demanding if applied to a state-wide identity.

Perhaps Moore would retort that I abuse, misapply or misunderstand her theory, as the problem above is about state legitimacy in general, rather than territorial rights in particular. States can justify holding territorial rights after the issue of state legitimacy or political obligation is addressed. In other words, if different groups with histories of conflict are willing to share a common future in the same society, or the interaction between the groups is inevitable, legitimating the existence of political coercion or authority, the state created will be entitled to hold territorial rights, on behalf of them, at any future point at which the three conditions of peoplehood and territorial attachment are satisfied. Moore summarises her argument as such: (1) state S holds territorial rights by acting as a vehicle of self-determination for group G; (2) group G is a group of the right kind to be the ultimate source of territorial rights; (3) group G legitimately occupies territory T.[14] In order to address the problem I raised, she must place another clause before the first proposition, namely that state S is justified in exercising its power over its subjects. We could then derive a temporal or logical order about the whole procedure below: state coercion or political authority should be first and foremost justified. Then we can identify a self-determining people with the three characterictics she proposes. Finally, territorial rights are justified once the people's claim to self-determination is achieved by the state. However, this does not solve the problem if we hope to make sense of state-wide identity by appeal to Moore's account of what a people is, because she conceives of the people as an existential precedent for their control over political institutions. If the group is characterized by state-wide identity, a valid corollary would be: either (1) insisting on Moore's account, a state is established by a people whose members *already* share a common group identity and history of cooperation, which is empirically rare;

[14] Margaret Moore, *A Political Theory of Territory* (Oxford: Oxford University Press, 2015), p.66.

or (2) granting separation from state legitimacy in general and considering it a task within a state-building project, we should reject the application of Moore's peoplehood account to the idea of state-wide identity and leave it to subgroups. I believe, as above, that the latter is more plausible.

Thus, it is illustrated again that there is a gap between the justification of territorial rights held by the state, derived from all subjects within a territory, and Moore's account of territorial rights, which is underpinned by people. This under-inclusiveness is shown in the case of anarchists who have not yet formed Moore's self-determining people, but do occupy a certain area legitimately; and it appears again when I attempt to apply Moore's idea to state-wide identity. Moore might close the gap, as previously suggested, if she explains in more detail how a state acts as a vehicle of self-determination. Two methods can be considered. First, we loosen the constraint on the rights-holder, by which all subjects, rather than a certain kind of collective, can participate in the construction of state territory. Second, a mechanism of self-determination is devised to explain how the state allows subjects self-rule, by which the state can particularise its legitimacy over its claimed territory, just as Moore appeals to the normativity of self-determination for the justification of territorial rights. These two strategies lead to Anna Stilz's proposal, discussed in the next section.

2. Stilz's account of territorial rights

Anna Stilz approaches territorial rights from a different angle to Moore. She has the broader aim of examining whether the modern form of territorial state can be morally justified. That is, she tries to work out the moral criteria that any extant state should meet and on which any reform of global justice should be based. As such, her theory not only targets the justification of territorial rights, but also defends territorial sovereignty underlying the modern state. Accepting that Moore is right to identify the connection between the people's group identity and the territorial dimension (although this has the problem of under-inclusiveness), Stilz then aims to show how a state rightfully claims jurisdictional authority over a particular population and territory from an *institutional* perspective.[15]

I proceed with a summary and examination of Stilz's account. There are two basic elements to the theory. In terms of methodology, she proposes an 'endogenous' approach; and with regard to value, she argues for 'political autonomy' as the goal of state sovereignty. The method holds that territorial rights are justified in two steps: a group of individuals first appeals to the state to realise their pre-institutional rights and subsequently the state forms those persons into a whole by gaining their support for building political institutions of their own. The process aims at what Stilz postulates, namely political autonomy, by which the idea of state legitimacy is rooted in a certain territory and group of people. Simply put, the reason for territorial sovereignty is to allow each subject self-rule: to be co-author of the law and to have a self-directing lifestyle with respect for others' personal autonomy. Moreover, this

[15] Stilz construes the state in a broad sense: 'a public-law making authority with the power of enforcement'. Moreover, she defines institutions as featuring (1) binding collective rule-setting; and (2) the ability to enforce determinations in case of disputes. See Anna Stilz, *Territorial Sovereignty* (Oxford, OUP, 2019), p.14.

ultimate value is upheld by three other core values: occupancy rights, basic justice and collective self-determination. Like Moore's account, occupancy rights are pre-institutional moral demands justifying the occupation by a particular population of a certain land, thereby necessitating the establishment of a state. The main difference from Moore is that Stilz does not construe the territorial rights-holder necessarily as a collective. Occupancy rights can instead be conferred on an aggregation of individuals formed without wrongful occupation. Furthermore, the justificatory process of territorial rights is complete only if political institutions help people bring about basic justice and collective self-determination. The former prescribes to a state the provision of freedom *from* injustice, by which the interests of subjects in personal security, basic liberties, property and subsistence should be protected. The latter safeguards people's freedom *to* guide their lives without alienation, by which each subject can fulfil their life-plans without being dominated by others. This account, though it accounts for the territorial dimension of state-wide identity, falls short of safeguarding the subgroup's territorial interests, because it is passive in the face of historical injustice. I will now explain those core values and then move onto a critique of Stilz's proposal.

2.1. The right to occupancy

Stilz's account of occupancy rights has much in common with Moore's, particularly in the ideas that occupancy rights emerge once residency takes place; and residents' life-plans become the moral source of their legitimate occupation. According to Stilz, occupancy rights consist in two more basic rights. First, if a person settles on a land, they are entitled to 'reside

permanently in a particular place and to make use of that area for social, cultural, and economic practices.'[16] Second, this liberty suffices the right-holder to

> a claim-right against others not to move one from that area, to allow one to return to it, and not to interfere with one's use of the space in ways that undermine the located practices in which one is engaged.[17]

The caveat of such rights, known as 'no wrongdoing' occupation, refers to a fair use proviso requiring that firstly, occupancy should not be due to the eviction of prior inhabitants; secondly, the mode of occupation should leave others with sufficient space to secure their own interest in located life-plans, a term that, as for Moore, Stilz uses to refers to a plan that demands the support of natural and social resources rooted in land or community.[18] If outsiders bear a duty to respect the occupancy rights of a given group, this group must allow access for outsiders to those resources if their fundamental human interests are at stake.

Additionally, Stilz emphasises that the right of occupancy, though conditioned by shared social or legal institutions to a great extent, must contain the following pre-institutional rights:

> the right of individuals to live in a certain area; to make use of that space for their valued social, cultural, and economic practices; and, together with others, to authorise

[16] *Ibid*., p. 35.
[17] *Ibid*.
[18] Stilz connects the idea of a located life-plan with four practices: (1) economic practices; (2) membership of religious, social, and cultural organisations; (3) personal relationships; (4) attachment to locality. *Ibid*., pp. 43-44.

> a legal institution to enforce rules regarding ownership or to engage in social practices defining their ownership.[19]

She terms this account of occupancy rights as the hybrid view, meaning that 'limited forms of property can obtain in the absence of social institutions, though these claims are underspecified and leave many incidents of ownership undetermined'. The reason for this view is as follows. First, if occupancy rights were to be purely legal or conventional (i.e. all rights to material goods are determined by shared social or legal institutions), then arbitrary expulsion would be morally justified whenever states legalise such a policy, and the evicted people (such as indigenous people) lack a comprehensive legal system or state justifying their rights to occupancy. Of course, this does not deny the possibility that the state legalising the arbitrary expulsion may also recognise the violation of the legitimate expectations of continuous occupation that may have been held by those who have been evicted, according to which the state may consider some compensation for the violation. However, secondly, whether that recognition or compensation would be granted is really a practice-dependent matter, by which it means that the wrong of arbitrary expulsion depends on whether the legal system happens to share or take it as a common practice. The recognition of the 'pre-institutional' rights to occupancy, instead, stresses that the wrong is rooted in a certain universal, moral value. So whenever arbitrary expulsion occurs, we should always consider it as violation of the moral interests of those that have been evicted, regardless of whether such an expulsion can be justified or necessary. In other words, if we consider the interests in residency/occupancy morally valuable, we ought to constrain the legislation, not the other

[19] *Ibid*., p. 39.

way around. To sum up, Stilz adopts a strategy similar to Moore's in order to anchor the first reason for territorial rights: that is, 'occupancy stresses the way in which individuals' central life-projects are often bound up with specific geographic location, so that interference with their use and possession of these places undermines the lives people have built.'[20]

However, Stilz's occupancy account diverges from Moore's when she advocates that (1) the right is not necessarily a group-right but essentially individually held; and (2) the idea of people as a political collective is formed endogenously through political institutions. The first proposition can be discerned when she accounts for the justification of occupancy rights and how a land that is occupied becomes a territory.[21] The second proposition reflects the normative difference of occupancy rights between Stilz (who takes occupancy as a pre-political necessary condition for the establishment of a state) and Moore (who takes it as related to the claim of a self-determining people to self-determination).

For Stilz, occupancy rights are essential for personal well-being and autonomy. This corresponds to how Moore conceives of individual residency rights. Once a person starts to live in a particular community, their well-being depends on whether they are able to realise their life-plans via social activities, which surely relies on a stable relationship with a

[20] *Ibid*., p. 11. With the rights so defined, particularly claiming that occupancy rights are pre-institutional, Stilz eschews Moore's criticism of her earlier version, namely the problem of *circularity*. Because in Stilz's early theorisation, she defined moral occupancy with a legitimate 'legal residence'. That is, 'a person has a right to occupy a territory if his legal residence within that territory is fundamental to the integrity of his structure of personal relationships…' Since the condition *legality* can only appear after the establishment of states, individuals can claim rights of occupancy only if a state is built and its judicial system covers the whole territory. In other words, this earlier version shows circular reasoning by on the arguing that on the one hand, rights of occupancy is a pre-condition of state territory, and on the other that the rights is posterior to the state. See Moore, (2015), p.99; Anna Stilz, "Nations, States, and Territory," *Ethics*, (2011): 572-601, p.585.

[21] I will provide a critical comparison between Moore's and Stilz's accounts of occupancy rights in Section 2.3 as the examination of Stilz's territorial rights.

community rooted in a certain land. This again manifests the strong connection between a particular location and a person's life-plans; and thereby reflects that personal well-being is largely determined by the quality of such a connection. The same logic of stable territorial occupancy applies to personal autonomy, which Stilz construes as 'the capacity to reflect upon, and to endorse or revise, one's own life-commitments for what one authentically judges to be good reasons, and to carry out these commitments in action.'[22] While most people recognise that this should be secured by sufficient access to an adequate set of options and the ability to exercise critical thinking, it also requires: a stable social environment without severe external interference. For example, in a country undergoing civil war, the options available to the people and their ability to exercise personal autonomy are massively reduced. Stable territorial occupancy is thus considered necessary for personal autonomy. Even nomadic people who do not have fixed habitations still mobilise within the fixed boundaries of a territory and expect to be able to make use of land without interference. These two interests are held by individuals; that is, any resident whose occupancy meets the no-wrongdoing requirement is able to secure their interests and thus entitled to the right of occupancy. However, it seems that, without the concept of a collective, a geographical domain of occupancy is not specified, because we have no idea how broadly the boundary of occupation should be drawn. If ten families living closely together occupy a certain area, would an eleventh living 500m away also count as occupants? That is, if the issue cannot be settled, there is a danger of annexation when a particular group forces neighbouring groups (of non-members) to 'join' its community. To tackle this problem, we turn to how Stilz derives territory from occupancy.

[22] Ibid.

Stilz notes that there are some important reasons for having a reasonably contiguous territory, and that justification of state territory is obtained only if, in addition to occupancy rights, basic justice and collective self-determination are all achieved. This highlights two significant features of Stilz's account: (1) legitimate occupancy only suffices to demand the establishment of a state; and (2) the boundary of a territory is anchored by political institutions, securing the three core values to a great extent. Both of these features indicate that prescribing a group right for holding territory is not necessary if a group of subjects can create a state with a certain territory. The burden of proof is then upon the state, which must justify holding territory with a certain boundary. I shall focus on the first strategy for now, because the explanation of the second is the task of later sub-sections.

Stilz introduces two kinds of territory: core (the main living area, such as one's permanent residency) and ancillary (the spatial gap between each area of core territory). Core territory is normally crowded with people and infrastructure, whereas ancillary territory indicates uninhabited wilderness, normally shaped only by roads and the natural landscape. Moore's account of occupancy rights, so understood, can perfectly capture the importance of core territory, but not of ancillary territory, because her account does not account for unsettled land. Stilz's account, nevertheless, has the theoretical resource for integrating ancillary territory with core territory, as follow. First, let us suppose that, as for John Locke or Immanuel Kant, states are necessary to address social inconveniences/conflicts (such as how to secure our moral interests in occupancy or settle conflict between different conceptions of justice or property rights) by building up impartial institutions and bringing justice to societies. Thus, we have a duty, in the state of nature, to be coerced by states to help secure

and construct a just society. Call it the natural duties of justice, of which I will give a clearer explanation in next sub-section. This prescribes a core territory to a state, because, as shown above, it has to set up just institutions for its subjects. Second, in order for the state to discharge its duties effectively and comprehensively, the state is compelled to form a distinct and contiguous territory, in the sense that a core territory should combine with the ancillary nearby. For example, if a mob robbed a bank in core territory and then escaped to ancillary territory, police should have the right to search for them in that area in order to carry out justice in society. Without a contiguous state territory bridging the core and ancillary, the authority of the police would cease at the edge of core territory. This draws our attention to the territorial nature of duties of justice: 'we cannot establish a unitary interpretation of property and contractual rights, enforce those rights, and punish violators, unless people who live in proximity and interact regularly are subject to the same institution.'[23]

Therefore, occupancy, under Stilz's account, becomes political territory only if supplemented by the establishment of a state and the connection between core and ancillary territory in virtue of the natural duties of justice. Moore characterises occupancy rights with the relationship goods based upon group identity, so the rights-holder must firstly form a group qua group in order to hold the rights. It should be collective, which also helps underpin the boundaries of territory in terms of the people's living area. Stilz, in contrast, construes the protection of pre-institutional interests in occupancy, prescribing the natural duties of justice, from which the state should be derived, so there is no necessity to conceive of the rights as group rights.

[23] *Ibid*., p. 201.

2.2. State legitimacy: Basic justice and collective self-determination

The delineation so far leaves open the question of why occupancy rights are sufficient to demand the state carry out the natural duties of justice. State legitimacy is the answer, and Stilz argues for two constituents of the concept: basic justice and collective self-determination, both of which are invoked to defend the interests of subjects as both *beneficiaries* of functioning legal systems and *co-authors* of legislation. Only if achieving these two core values can territorial rights be justified and thus the boundaries of state territory.

2.2.1. Basic justice

Since occupancy rights are partly pre-institutional and partly institutional, people live in a state of nature despite the identification of their occupancy rights. Without an impartial institution that can be enforced, rights are not secured. A state providing a basic and just legal system is necessary. Stilz explains how this procedure is developed by appeal to the Kantian argument and subsequently why the value is necessary condition for an autonomous lifestyle.

The Kantian view of state legitimacy can be stated as follows. First, each individual has the innate right to be immune from the domination of others. Second, in order to make each person their own master, everyone is entitled to equal protection of their external freedom[24] to the extent that the exercise would not be subjected to the wills of others arbitrarily. The

[24] External freedom is a derivative of innate right. Even though the latter idea articulates the limit of what we can will (i.e. we should not wish to dominate others), the right is silent about what (external) means one can use to achieve its will. The concern over what freedom we are entitled to in order to realise our wills thus becomes the issue of external freedom, which, according to Kantian theorists such as Stilz, considers the state as a necessary intermediary for making such freedom comprehensible and realizable.

idea of acquired rights is thus envisaged to specify the realm of protection, in which none can interfere without just cause, thereby to reach a self-determining life. Acquired rights refer to the rights whose content is determined conclusively and justified only by the presence of political institutions. This includes commonly shared occupancy rights. Of course, the constitution of the rights has to respect pre-institutional facts as articulated in section 2.1. Thirdly, in order to protect this, every individual ought to respect the rights specified, either voluntarily or under duress. This protection, fourthly, not only regulates the prospects of agents (i.e. the moral obligation to refrain from violating others' rights), but further suggest an *omnilateral* arbiter able to interpret and specify the content of the rights (and the correlative duties) impartially, to decide what means can be used to realise rights, and to enforce these decisions if necessary. This arbiter is required in virtue of the problem of unilateralism, which, according to Stilz, amounts to (1) some moral rights, especially property rights, being indeterminate in a state of nature; (2) even where moral rights are determinate, individuals may disagree about what justice requires in particular cases; and (3) when faced with disagreement, individuals lack the proper standing to resolve them.[25] That is to say, if legitimate occupants hoped to further their interests in occupancy rights, the problem of unilateralism they subsequently encounter would establish the state with omnilateral will. This implies that (1) individuals living in proximity to one another have a duty to ensure others' access to just institutions in order to protect their interests (including occupancy rights); (2) there is no right not to be coerced to fulfil the duty of justice; and (3) just states have the legitimate *pro tanto* power to coerce dissidents violating the duty of justice. A state with omnilateral will should first and foremost fulfil basic justice by establishing some basic legal

[25] Anna Stilz, "The Value of Self-Determination," in *Oxford Studies in Political Philosophy, Volume 2*, ed. David Sobel, Peter Vallentyne, and Steven Wall (Oxford: Oxford University Press, 2016).

and social functions independent of anyone's attitude towards them. This amounts to, for instance, the protection of personal security, the construction of an impartial judicial system, and fair distribution of public goods. Basic justice is necessary to personal autonomy because it protects the occupants' ability to form, revise, and deliver life-plans on their land without interference. Analogously, a society without basic justice is like a game without rules; everyone is in the game, but no-one know how to play.

Nevertheless, basic justice alone is not sufficient to equip a state with an omnilateral will, nor can it legitimise a state's claimed territory, because the value enhances the context of social activities merely to the extent that each can secure its subsistence and develop life-plans without interference. Recall that benevolent annexation is permissible when the state's jurisdictional authority is solely based upon a purely functionalist account of state legitimacy. To avoid this problem, the state with omnilateral will must also represent the subjects' attitude or identity. We thereby come to the final core value, i.e. collective self-determination.

2.2.2. Collective self-determination

Theorists propose many ways of achieving collective self-determination. Liberal nationalists assert that a state should manifest the national culture(s) of its subjects or the majority. Moore switches our focus to whether the self-determining people, whose formation can be separate from political institutions, has their (group) identity-based interests secured by the state. Stilz holds a slightly different view from Moore, arguing that the ideal is achieved when a state forms a shared political will via the creation of political institutions in which a significant majority of subjects is able and willing to engage. Collective self-determination,

under such an account, sheds light on the necessity of political institutions devised to respect subjects' personal autonomy and properly reflect their values, as well as the contribution of subjects (as political co-operators) to legislation, such that they can obtain a sense of self-rule and political accountability. That is, the shared political will of the people as a unified entity does not come into being pre-politically or purely institutionally, but is born out of the interaction between political institutions and subjects' political participation. This peoplehood is then called the 'endogenous approach'.

How can we be sure that subjects are the co-authors of their political institutions, by which they are both ruler and ruled? Stilz deploys the idea of 'reasonable affirmation',[26] which is an ideal account of collective self-determination in the context of a modern state. By her definition, 'a citizen affirms participation when, upon reflection, she endorses her intention to "play her part" in some joint enterprise'[27] and the agent's affirmation must be a consequence of their own reflective judgements (rather than under duress). Thus, a citizen should be willing and able to carry out their civic duties. Yet how can affirmation be reasonable? Three conditions must be met. First, the participants must share some of the higher purpose behind the political enterprise. This indicates that all citizens should have some reason to endorse the basic procedure of collective decision-making and higher, abstract ideals of political cooperation sustaining the state, over and above their personal and substantial priorities. Second, the agent must be aware of how their participation contributes to the achievement of political cooperation, by which citizens can gain a sense of

[26] In *Territorial Sovereignty*, Stilz discards the term but appeals to Niko Kolodny's idea of *correspondence*, although they both have the same sense and proposition.
[27] Anna Stilz, "The Value of Self-Determination," in *Oxford Studies in Political Philosophy, Volume 2*, ed. David Sobel, Peter Vallentyne, and Steven Wall (Oxford: Oxford University Press, 2016).

accountability and a genuine connection to their social development. States should thus provide sufficient channels through which citizens can reveal their political cooperation to each other, as well as some means to repeal a policy made on behalf of subjects but against either the shared higher ideals or fundamental moral values. Finally, the joint venture requiring affirmation should be valuable i.e. the means and outcomes of political cooperation should not violate basic justice and personal autonomy. Granted these three conditions, the subjects shall be the co-authors of their common life structure as they form 'shared political will' via the channel of the state over legislation. That is, they self-impose the political institutions on themselves, which are shaped by their general political will.

The idea above is not absolute, in the sense that violation, under some conditions, is permissible. Before getting to what can override the ideal, let me explain how it relates to collective self-determination more clearly. The key point is that collective self-determination is achieved if political participation follows reasonable affirmation. The argument is as follows. First, the state is a comprehensive coercive and hierarchical entity demanding the compliance of its subjects; moreover, these subjects are under the authority of the state *involuntarily.* This reflects the normative tension mentioned in the preface, which provides subjects with some *pro tanto* reasons to be hostile to state governance. However, secondly, reasonable affirmation can be employed to address the tension by forming a *cognitive* attitude through which the agent could take their participation to be valuable and worthwhile. This attitude is *not* desire-based, i.e. what is affirmed is not necessarily what one desires. If the account had been desire-based, the form of the state would have no doubt frustrated every subject and self-rule would never be achieved. What reasonable affirmation suggests instead is to make the process of collective decision-making *meaningful*, from which an agent experiences a

sense of valuable cooperation after a series of reflective judgements going back and forth upon what and how it contributes and what and how it gains. Although the outcome may not always reflect their participation, the agent should be able to derive, by reflection, a meaningful reason to continue to engage in the political cooperation of its society if the three conditions for reasonable affirmation are fulfilled. Since the subjects are willing to engage in the constitution of shared political will, this groups them into a self-determining people.

For example, when the Scottish independence referendum was held in 2014, a large number of people who voted in favour of independence felt disappointed and alienated, because their will was not being enacted and staying within the UK contradicts their vision of the future society and perhaps, undermines their legitimate expectation of some benefits they anticipated had independence taken place. It may be plausible to question, from the viewpoint of a Yes-voter, whether they have freedom of self-rule. Some reflection, however, overcomes this challenge. First, before the referendum, there was national debate on the matter throughout the UK and the government and media provided many channels to let people express their opinions. Second, the decision was made via direct and equal political participation. It is not only determined by a referendum, but also allows many sorts of citizens (such as Europeans or those from other commonwealth countries) with legitimate residency to vote. Third, most Scottish people still believe that either they anticipate sharing their lives in the same state because they still share state-wide identity (British), or the basic structure of the society can still uphold and further their fundamental values. Fourthly, while they still trust the basic structure, some may believe they can remedy the situation through further political participation. Provided that the consideration above meets the conditions of reasonable affirmation, namely (1) the political will determining the 2014 Scottish

Independence referendum is freely formed by public deliberation; (2) the result still reflects the shared higher values and form of collective decision-making of Britain or Scotland; and (3) the outcome accords with basic justice, we can conclude that the collective self-determination of disappointed Yes-voters in the UK has not been violated, because they can derive a meaningful reason to continue to embrace political participation.

The flip side of reasonable affirmation implies alienation from the shared will when some subjects fail to achieve it, i.e. they no longer have a meaningful sense of cooperation or being part of society. Imagine a national minority which is only 3% of the total population. Its parent state affords them basic justice and, due to representative democracy, other members are aware of their views. However, their suggestions with respect to any identity-related policies are always turned down because they are tiny in number. Given the lack of institutional support, they may not be able to fully discharge the associative duties inherent in their community and so may undermine the development of their culture. Furthermore, the structure of a modern state worsens this alienation, since it not only demands compliance from subjects, but also penetrates deep into most dimensions of social life. This makes it hard for the minority to leave the subjection at will, as well as restrictive policies on migration that may exacerbate the problem. In such a scenario, it is *persistent alienation* that the minority suffers. For, even though the members exercise their right to political participation, ongoing infringement of their fundamental interests means that they are constantly frustrated. Their political participation is meaningless, as their fundamental interests and order of values will not be reflected in most legislation. Persistent alienation not only causes a rupture from the shared political will, but also indicates a serious violation of personal autonomy in virtue of relentless coercion by others without justified reasons.

Nevertheless, some valid forms of alienation can override this. Recall the last condition for reasonable affirmation: the political enterprise should accord with basic justice and personal autonomy. Two groups can be thus identified as we understand the condition, in a principled and practical way respectively. First, people whose conception of self-determination contains a contempt for basic justice or the independence of others are not entitled to institutional support because their substantive values violate the condition in principle. Stilz illustrates this with the example of political anarchists and imperialists. Anarchists aim to subvert states regardless of whether this brings about justice because they believe that the state as such can never be justified. We have to disagree with their claim, not in virtue of the belief being false, but based upon their way of achieving it: the group would rather sacrifice the benefits others rely on (i.e. basic justice) for the sake of their beliefs. Being unilateralist, they enforce their anarchism at the expense of others' interests. The same problem applies to imperialists, who disrespects certain people's personal autonomy and consider themselves morally superior, dominating others at the expense of basic human rights.

In the face of these two groups, states are justified in depriving them of their right of collective self-determination, as their principles go against basic justice or personal autonomy. The first group, though holding their view in accordance with the values principledly, cannot fully realise their prospect because the institutional re-configuration they desire is impractical. A very small group, or one dispersed widely across a country is a case in point. For example, a small religious group scattered across a territory might make a claim to secede, as they hope to have a state incorporate their religion into state institutions and law. Even if the religion shares liberal values, their claim can still be rejected due to the lack of territorial claim, or

because relocating and concentrating the group in a certain area would cause unnecessary and unjust population mobility. That is to say, even though their conception of collective self-determination is in principle consistent with basic justice or personal autonomy, the state still needs to assess whether the consequence of realising the claim with respect to the extant societal conditions would undermine the rights of others.

As a result, the account of collective self-determination renders the last piece of the jigsaw, committing us to the following picture of the endogenous approach to peoplehood and the justification of territorial sovereignty. Initially, a group of individuals living in proximity starts to build up social lives from which occupancy rights emerge. In order to protect their rights and protect ourselves against the 'Swiss-cheese' problem outlined earlier, they subsequently subscribe to the establishment of a state with basic justice and contiguous territory. Yet, as the modern state must impose laws on its subjects, they appeal to the reasonable-affirmation account of collective self-determination. This collective self-determination further implies that (1) 'a people is born only if its members engage in institutionalised political cooperation and come to endorse the cooperation';[28] (2) collective self-determination should submit to basic justice; and yet (3) this reveals the injustice of persistent alienation demanding rectification whenever a group's self-determination is disrupted and the realisation of which would not violate basic justice or personal autonomy principledly and practically, the group is justified in having their claim met. In conclusion, even though our occupancy rights and natural duties of justice are generally held by each individual, protecting and respecting them is best served, as Stilz argues, by 'a pluralistic and decentralised order of self-governing

[28] Stilz, *Territorial Sovereignty*, pp. 214-15.

territorial units'.[29] Our endorsement of territorial sovereignty is thereby justified as states materialise occupancy rights, basic justice and collective self-determination within the territories they legitimately occupy.

2.3. Examination of the account

I now scrutinise Stilz's account of territorial rights in terms of, again, whether or not it can capture precisely the territorial foundation of state-wide and subgroup identities. The state is the holder of territorial rights even though the source of normativity can be traced back to the subjects severally. While the people form the shared political will, according to which the state can claim to hold territorial rights and so derive its jurisdictional authority over the people concerned within that territory, whether a subjected group is alienated from the will is key to the continuous holding of territorial rights. Such a condition shows the benefit of the account: the reason for collective self-determination, namely political autonomy or non-alienation, is explicit and persuasive. Moreover, in contrast to Moore's account, which takes the self-determining people as the holders and trustee of the rights to the state, territorial rights in Stilz's theory are truly the artefacts of the state: the rights are supported only if the state realises the three core values for its subjects. Except in the case of persistent alienation, subjects have no right to challenge states' territorial rights. Yet if construing the occupancy rights as those held by individuals, it is hard to specify the area in which an alienated group can exercise their right to self-determination. How do we encounter people who intermingle with the group and yet whose occupancy rights are not at stake? While their territorial

[29] *Ibid*., p. 20.

interests are rooted in the land they legitimately occupy, why could they not be legitimate rights-holder to the land?

Stilz's reply is: even though occupancy rights are individual-based, the account allows space for these rights to *become* group rights. This means that interests in occupancy can be collective interests if they necessary to some group.[30] Recall that a persistently alienated group has a moral claim to collective self-determination if the conception of this is in principle and in practice consistent with basic justice and personal autonomy. Suppose further that the group, who lives concentratedly in a certain geographical area, lacks institutional support for their culture. We can then apply Moore's account of the connection between personal well-being and the relationship goods upheld by the prosperity of community to such a group. Stilz's moral occupancy, though individual-based, hence suffices to prescribe a group right of self-determination to the group whenever the interests can only be protected through a 'collective use' of public space, namely cultivating the culture on a particular area of land collectively. That is to say, if they want to validate their claim of collective self-determination on the land they now occupy, which no doubt has the effect of overriding the self-determination of non-members, they must claim it in terms of group rights, precisely denoting the boundary of the community and according to what excludes others' self-determination legitimately. Transformation occurs because the conditions they confront bind their individual interests to whether or not the culture can be sustained and developed within the community.

[30] The form of group rights refers to collectivity, based on the Razian account of individual rights: 'if those who make up the group possess a joint interest in a good that justifies the imposition of duties upon others.' See Peter Jones, 'Group Rights and Group Oppression,' *Journal of Political Philosophy*, 7(4): 1999, pp. 353-77.

However, I shall point out two problems with such a transformation. First, if group rights can be derived before the establishment of the state, which reminds us of Moore's collective rights of occupancy and so could confer territorial rights on the group meeting Moore's conditions of self-determining people, then Stilz's account of territorial rights seems to be merely another version of Moore's theory, and Stilz's theory thereby loses its original appeal that states are necessary to create a people (i.e. endogenous peoplehood) and the appropriate holder of territorial rights. Several paragraphs reflect this similarity. Firstly, Stilz illustrates this derivation of group rights by envisaging different subgroups sharing the same land. They are a religious community (say Hutterites), a national group (Canadians) and a group of Somali immigrants.[31] Their group rights to use that particular land is derived from, according to the definition, their (individual) interests in the engagement with the located social, cultural and economic practices. The derivation, however, faces a fundamental question of whether or not it could be reached independently of the state. I believe at least the first and the third groups do not rely on the state necessarily; for their religion or culture can be formed independently of states. So it is plausible to claim that some occupancy rights can be group-based without the existence of the state, a picture which rather resembles Moore's idea of occupancy.

Next, it is necessary to consider whether such occupancy rights can be construed as territorial rights directly. The concern leads us to the second sign that moves Stilz's account closer to Moore's. That is, she broadens the definition of the state to include traditional tribes (of indigenous people) with some formal decision-making process and some local self-organised

[31] Stilz, (2019), p. 54.

schemes whose scale is smaller than the modern nation-state; because she views any institution showing (1) binding collective rule setting and (2) the ability to enforce its determinations in case of disputes as qualifying as a state.[32] On the basis of such a definition, the Hutterites and Somalis could be capable of turning their occupancy rights into territorial rights, if their religion or culture inherently contained such institutional elements. Recall Stilz's endogenous peoplehood account. They can appeal to their culture or religion as state and then transform themselves into a people eligible to hold territorial rights. Or, they can demonstrate their peoplehood by showing the institutional elements inside their religion or culture. This result draws our attention immediately to Moore's identification of associative duties inherent in a self-determining people. That is to say, either the religion or the culture suffices to imply the alleged relationship-dependent goods entailing the associative duties that the group members are obliged to carry out. Consequently, the duties entitle the groups to claim territorial rights because their aspiration to collective self-determination demands the support of institutional resources on that particular territory. The occupancy rights, as illustrated, become territorial rights directly.

Therefore, some groups could indeed be entitled to territorial rights before being subject to a modern, Weberian state. Either you follow Moore's theory or Stilz's loose definition of the state. Moreover, Stilz proposes an idea similar to Moore's self-determining people as she asserts that a qualified claimant to secession should meet the following conditions: (1) suffering from persistent alienation; (2) possessing territorially based practices of political cooperation; and (3) being capable of forming institutions reaching minimal justice.[33] Except

[32] *Ibid*., p. 14.
[33] *Ibid*., p. 135.

for the first condition, the remainer should remind us of Moore's requirement for a people characterised by a history of political cooperation and a capacity to form a government. The critical point here is, however, not the degree of similarity but on what ground their territorial claim to a specific land as part of their territorial rights is justified. Is it the state to which they are subjugated that confers the rights on them or do they themselves, while possessing some common, pre-political features distinct from others within the state, create the rights prior to or during the subjection? In Stilz's earlier version, her answer was the former and was therefore criticised by Moore on the basis that, when looking at many countries originating from the defeated empires such as Ottoman and Austro-Hungarian, the state should not be the only legitimate holder of territorial rights or the precondition of peoplehood.[34] It is not even the necessary or fundamental constituent of the rights if following Moore's account. To avoid this charge, Stilz seems to adopt a looser definition of the state and yet injects Moore's ideas into her theorisation. Such a result, unfortunately, makes her theory diverge from the original appeal of a statist view and then become a more advanced, elaborate peoplehood theory instead.[35]

Perhaps Stilz can make her account less Moorean by delaying the transformation to group rights or adding more conditions to the requirements for group rights. For instance, that deriving group rights is necessary only if a given group's collective interests are at 'great' stake

[34] Moore, (2015), p. 106. For Stilz's early account of territorial rights, see Anna Stilz, "Nations, States, and Territory," *Ethics*, (2011): 572-601.

[35] The peoplehood view, according to Stilz's definition, 'attributes territorial rights to a self-determining collective that exists independently of the state' but the collective is not characterised by culture necessarily. Admittedly, Stilz regards that her account has 'significant affinities with the peoplehood view' but 'does a better job…at explaining why self-determination is something we have deep reason to care about.' See Stilz, (2019), p. 28-9. Simmons also has a similar concern about how we underpin Stilz's hybrid view appropriately. See A. J. Simmons, *Boundaries of Authority* (Oxford: Oxford University Press, 2016), pp. 139-140.

(say persistent alienation). Nevertheless, I shall argue that this (strictly) conditional transformation would create a second problem of making the theory too passive to address some historical injustices if, for instance, a group aims to restore their past (legitimate) entitlement regarding past unjust suppression. This refers to concern over the *scope* of the group right. For the group right can only be created after persistent alienation, the scope of which may depend on where or what they control. Given that the claimant can only raise the claim in terms of their current political or social situation, this *status quo bias* therefore constrains their collective self-determination. This is the main problem with Stilz's theory: it is insensitive to the historical illegitimacy inherent in the development of states. Most states have unjust origins, involving events such as invasion or annexation. The relics of this past continue to structure society, in which certain groups are destined to be the minority or majority, and certain cultures happen to be dominant. It seems that, since Stilz is concerned only with how subjects cooperate in political institutions here and now, an unjust history has no place in her account of state legitimacy. Her theory thus appears to suffer from status quo bias, privileging the current boundaries of territory shaped by unjust history.

Stilz does recognize this issue of problematic genesis but does not grant it great significance. In her reply to Simmons, who advocates that the problem should be rectified by subjects' consent to state's subjection, Stilz refuses to acknowledge that 'a theory of boundary legitimacy which does justice to our intuitions about unwilling minorities, and which allows for some revision of status quo boundaries, must take a historical rather than a presentist form'.[36] Her presentist view argues that historical illegitimacy matters only if it *still* constitutes

[36] Anna Stilz, 'Territorial Boundaries and History,' review of *Boundaries of Authority*, by A. J. Simmons, *Politics, Philosophy & Economics*, XX(X)(2018): 1-12, p. 5.

the current pattern of injustice. She illustrates this by asking us to imagine how we should react if a group of British people wanted to restore their historical entitlement, tracing back to their Mercian ancestors. Ancient history has very limited moral force, especially compared to the claims of contemporary groups. Given that those Mercian descendants are unlikely to be discontented with their extant living conditions (or, if they are, their social problems are not likely to relate to historical injustice), it is absurd to concur with their claim to historical entitlement.

Squaring our concern with the birth history of how our *current* states came into being is enough to show the problem of historical illegitimacy. Moreover, even if we agree with Stilz's view on when/how historical illegitimacy matters, we should be aware that persistent alienation is a *process*, rather than a single event: a symptom of a series of alienations or unjust exclusions. While Stilz's principle of non-alienation articulates when exactly the state's claim to territorial rights is no longer justified for a certain group, the account fails to address a follow-up concern: to what degree should alienation be compensated for? Given that substantial control over the group's living space or natural resources is conditioned by historical injustice, Stilz's account gives no guidance on how far back restoration should be traced if status quo bias is to be prevented.

Furthermore, correcting the wrong might not demand the reform of society in accordance with a particular phase of history, but rather a fairer structure of power relationships between groups in the present. A review of unjust periods of history does not reveal any moral justification for the inferiority ascribed to various groups. Unfortunately, Stilz's proposal is insufficient to provide such a balance. Suppose a minority had been provided with a possible

world in which they were the majority of the state. What reason would they have to accept the existing world that discounts their collective self-determination? The Kurds are a case in point: this big ethnic group is carved up among five states, resulting in their political suppression in each state. Stilz's answer refers to whether the minority can reasonably affirm their political cooperation with the assistance of political institutions. However, the proposal does *not* include the affirmation of the group's political inferiority. Stilz, on the one hand, advocates that subjects should endorse the higher, abstract purposes behind the joint venture and the collective decision-making procedure of state; and on the other, interprets such endorsement in terms of the authenticity of political participation (i.e. whether the subjects are freely playing the role assigned by the state, by which the shared political will is formed). Some political dissidents, though living under an authoritarian regime, may devote themselves to political cooperation because they hope to reform the government through their participation. Their engagement is no doubt authentic but does not serve higher, abstract ideals or the formation of a collective decision-making process. Moreover, because historical illegitimacy profoundly shapes both those ideals and the decision-making schemes of society, participation could be taken as a reasonable *compromise*. While the wrong caused by historical illegitimacy should not be dismissed via status quo bias, I propose that reasonable affirmation should be led by a fair structuring of the power relationship between groups in order to reach what Stilz prescribes: the endorsement of a state's higher purposes and collective decision-making. To meet this demand and also allow persistent alienation to be conceived as a long-term process to be taken into account, it is necessary to loosen the condition of transformation to group rights.

I have shown that if the condition for Stilz's derivation of group rights are construed too strictly, the territorial dimension of subgroups' identities are not given due weight, because it minimises the impact of historical illegitimacy. Yet if the condition were construed too loosely, Stilz's theory would lose its statist appeal and align with peoplehood theories such Moore's. However, Stilz does capture the territorial dimension of state-wide identity. First, it does not fit in with the identity whose genesis may be independent from the state's. Second, it should follow the value of personal autonomy in which each subject has sufficient space for safeguarding their identity-related interests without interference. In other words, since such an identity is state-led and top-down, its development should take account of the suppression of personal autonomy. In contrast, the identity of subgroups focuses on whether the group can obtain sufficient institutional resources to sustain and develop their identity-related interests against the imposition of a state-wide identity. Because the identification of the group does not purely rely on the state it is currently within, their territorial rights might exist prior to the extant state and so cannot be fully grasped by political institutions as a whole. Based on this, Moore's account rooted in the relationship goods of a group is superior to Stilz's, as it reflects bottom-up normativity.

3. Conclusion

In conclusion, the examination of the two accounts not only identifies the flaws of Moore and Stilz's territorial rights theories, but also illuminates, surprisingly, the mutually beneficial relationship between them; because Stilz's work is useful when theorising the institutional dimension of territorial rights, whereas Moore's work is useful when recognising rights in terms of communal relationship goods. This sheds light on a new account of territorial rights

that synthesises Moore's and Stilz's proposals and should be capable to (1) account for both state-wide and subgroup identities; and (2) reconcile them in a proper balance (i.e. resolving the problems identified in this chapter). Undoubtedly, this combination of the two theories will be the normative foundation of justified secession and be developed in the next chapter.

Chapter 4: Territorial Rights for Two Identities (2)

0. Preface

The conclusion in the previous chapter implies that a new prospect of territorial rights combining Moore and Stilz's theories can provide a better explanatory force upon the development of two primary group identities (i.e. state-wide and subgroup's identities) as regards justified secession. This chapter is then dedicated to advancing this new account. Yet before that, it is preliminary to understand two kinds of collective self-determination underlying the two identities.

In the modern era, it is often believed that the necessary conditions of state legitimacy are, first, basic justice (namely, respect for basic human rights) and, second, some kind of *self-rule* by the people.[1] This presumption is reflected and explained in the previous chapter. The former condition can be accounted for in reference to the duties of justice, is general and applies equally to any individual on the territory of the state. In other words, states should grant basic justice to anyone in a society whether the person is entitled to rights of political participation or not. The second condition, which concerns the members of the state (i.e. citizens), has two dimensions. The first originates from a commitment shared by most members. Call this **the formal self-determination demand** (abbrev. *FSD*), according to which almost *all subjects anticipate sharing the same society in the future or take such a*

[1] See, Allen Buchanan, "Political Legitimacy and Democracy," *Ethics* 112, no. 4 (July 2002): 689-719; David Copp, "The Idea of a Legitimate State," *Philosophy & Public Affairs* Vol.28, no. 1 (Winter 1999): 3-45; John Horton, "Political Legitimacy, Justice and Consent," Critical Review of International Social and Political Philosophy, Vol. 15, no. 2, (March 2012): 129-148.

commitment for granted. To meet this demand, states are expected to deliver what we might call a *common life project* for their subjects. Talk of a common life project already presupposes some collective agency distinct from an aggregation of individuals able and willing to determine a shared living goal (i.e. a particular conception of justice, culture, social values, etc), a shared political will of a significant majority and the support of institutional resources.

Fulfilling FSD inevitably raises a moral concern about subgroups. This is because firstly, it is unreasonable to assume that a common life project would correspond to each *individual* citizen's personal views about what is of value. Secondly, there is always a majority and a minority, in the sense that the imposition of a common life project by many is controversial, because there are subgroups within a state territory such as national minorities or indigenous peoples who may not share the majority's conception of the project. Provided that a self-determining people (like Moore's) can forge its distinct group identity and form the associative duties, they are entitled to realise their peculiar conception of collective self-determination with the support of institutional resources. Call this second dimension of self-rule **the subgroup's self-determination demand** (abbrev. *SSD*). SSD answers the question of how to utilise institutional resources to achieve FSD without dismissing or violating SSD. In other words, given that FSD requires states to devise a common life project for securing the commitment to share the same society, SSD entitles minority groups to their rights of self-determination as limits on the realisation of FSD.

The state has to take both FSD and SSD into account in order to claim jurisdictional authority over a particular population and territory. First, in order to fulfil a common life project and integrate all subjects into a single unit, a state should cultivate a state-wide identity shared

by most subjects. Second, such an identity should allow sufficient space for subgroups to channel and materialise their collective self-determination through self-government. As I showed in the previous chapter, collective self-determination does not only involve a particular people, but also concerns the space they legitimately occupy. It thereby requires us to take account of the 'territorial dimension' of group identity. Stilz's account deals with the territorial side of state-wide identity, while Moore's account applies to the territorial interest of subgroups. However, if a state's territorial rights are to be justified, the territorial interests of both group identities have to be protected. I thus conclude that FSD is best met by following Stilz's theory, while Moore's casts light on how we might fulfil SSD. In addition, SSD is based on relatively backward-oriented reasoning, while FSD looks to the future. This is because the warrant for the former depends on the identification of subgroup's historical development and whether/how their shared identity is formed and supported by the state; whereas the latter looks at collective self-determination through the lens of political autonomy, with the idea that the jurisdictional authority of state will remain justified as long as the subjects do not suffer from persistent alienation.

I term this hybrid view the 'dualism of territorial rights', as it protects the territorial interests of both identities. Since this view is constituted both by Moore's and Stilz's account, it has the following features.

Firstly, a state legitimates its claim to a particular land as its territory only if the subjects' interests (divided up by subgroup and individual) in terms of occupancy, basic justice and collective self-determination are secured by political institutions. This implies two territorial attachments: (1) a subgroup connects to territory in a collective manner if the territorial scope

reflects their living area and relationship goods rooted in the land; and (2) the rest of the subjects achieve their sense of attachment via being part of the people whose creation requires the imposition of political institutions.

Secondly, territorial rights are jointly held by subgroups and citizens as a whole, by which we can gain a new understanding of the state. The inference is as follow: (1) citizens form a unified political peoplehood with the assistance of the state, while (2) subgroups' political engagement also constitutes the people with their distinct group identity; and (3) given that the subgroup has, according to Moore, collective agency, Stilz's peoplehood implies that a state (containing subgroups) embodies two kinds of collective agency in itself, through which the state is, normatively speaking, an entity with several proto-states potentially embedded in it.

Thirdly, the former two features imply that the normativity of the rights consists in non-alienation and associative duties (derived from the relationship goods of subgroups). That is to say, a state legitimates its jurisdictional authority if and only if the citizens as a whole achieve political autonomy and subgroups are able to discharge associative duties within their communities. Furthermore, such dualism of territorial rights is kept in a unity *insofar as the subgroups' associative duties are secured in a non-alienating way*. When the duties are discharged, the subgroup is not alienated from the wider people or given a sense of forced assimilation. The new account thereby establishes a normative condition for justified secession, namely *if a state fails to protect the associative duties of a subgroup in a non-alienating way* (discussed in the next chapter).

Fourthly, when departing from the ideal theoretical default (i.e. a closed society), my dualistic account follows Lea Ypi's permissive theory of territorial rights, according to which a state's territorial rights are justified provisionally and conditionally if it is committed to establishing a global authority realising global justice, in order to address the injustice of historical illegitimacy.[2] However, the power of global authority is not absolute. The collective self-determination of subgroups and the three core values proposed by Stilz (i.e. occupancy rights, basic justice and political autonomy) should condition any adjudication deriving from the authority.

I shall proceed with an exposition of the new account (except the condition for justified secession) in this chapter. After showing that this dualistic account could avoid the flaws in its original forms (i.e. Moore's and Stilz's proposals), I shall aim to tackle the issue of multiple territorial rights holders within state territory, because there is a potential worry that this may undermine political stability. I shall argue that such political instability is both the cost of endorsing the new account and a *necessary condition* for granting the extant boundaries of state territory, because the dualism has the benefit of resolving wrongful subjection/historical illegitimacy. For, on the one hand, I shall contend that the idea of consent does not fit with a plausible understanding of wrongful subjection; and on the other, such injustice should be remedied via coordination between social and global justice in the pursuit of self-rule. This is because, as I shall illustrate, historical illegitimacy is also characterised by an unjust global background, and the potential tension between two identities (within my proposal) should not only appeal to the state but also to a commonly

[2] Lea Ypi, "A Permissive Theory of Territorial Rights," *European Journal of Philosophy* 22, no. 2, (2012): 288-312.

held global authority as a higher-order omnilateral arbiter. The first section will contain all the arguments for my proposal for territorial rights, while the second attempts to illustrate what the new account implies for justified secession.

1. Defence of the dualistic account

The moral importance of making FSD co-exist with SSD has been shown as a reason for advancing the dualistic account, which makes the proposal appealing at first glance. Yet one may wonder (1) whether each of Stilz's and Moore's account might not be sufficient on its own to secure the territorial interests of the two identities; (2) whether Moore's and Stilz's idea can coherently combine despite the problems in its original forms; and (3) whether the state would not be politically unstable since the proposed dualism advocates two kinds of territorial attachment and rights-holder, thus exposing states to the potential for unlimited secession and territorial disintegration. To remind the reader, the first concern was fully addressed in the previous chapter, in which I pointed out that Moore's theory has the problem of under-inclusiveness whereas Stilz's theory suffers from passiveness to historical injustice. Moore's account cannot justify the holding of unoccupied territory or extend to individuals without strong group affiliation and so fails to extend a proper territorial account to a state-wide identity. Stilz's account fails to take subgroups fully into account due to its passive attitude to the correction of historical illegitimacy inflicted on subgroups.

However, one might still wonder how the new account tackles the second and third concerns. To resolve these worries, I shall firstly illustrate how the dualistic view can address the old problems. Secondly, I shall tackle the potential problem of political instability; and thirdly,

illustrate the necessity of empowering subgroups with territorial rights by showing what values it advances. I will then show that a state is entitled to jurisdictional authority over a particular population within certain boundaries of territory if it is willing to take the potential risk of secession and commit to reducing it, as an alignment with multiculturalism and a way of addressing wrongful subjection, and also, to commit itself to the establishment of global authority, in accordance with the territorial interests of the two identities.

1.1. The hybrid view and the old problems

Let me first summarise on what ground Moore's theory is incompatible with Stilz's and then illustrate how my dualistic account overcomes the incompatibility. In the previous chapter I outlined Moore's peoplehood, self-determination theory and compared it to Stilz's statist view. The difference between them, which might make the combination (i.e. my dualistic account) incompatible, boils down primarily to how they understand the significance of states regarding territorial rights.

Moore believes that 'the state may be the appropriate mechanism through which rights, vested in the people, are exercised, but the people are the fundamental holder(s) of territorial rights.'[3] She hence advocates that a self-determining people is entitled to territorial rights and the state's institutional support, provided that the people is capable of generating the relationship-dependent goods or associative duties, which grounds their common life

[3] Moore, (2015), p. 96.

projects on a specific territory. A state derives its jurisdictional authority over a particular territory only if it secures the territorial rights of its self-determining peoples.

In contrast, Stilz takes states as necessary for realising three fundamental values (i.e. occupancy rights, basic justice and collective self-determination) and thereby entitled to hold territorial rights to a particular territory on its people's behalf. As she articulates the endogenous approach to peoplehood, which says that a state achieves the ideal of collective self-determination by grouping the majority population into a collective and advancing their political autonomy, a state is deemed to be a precondition of collective self-determination (or a self-determining people). As such, if Moore's account conceives the state as a *vehicle* of the collective self-determination of its peoples (who have held territorial rights already), Stilz claims that the state is indeed the *maker* of a self-determining people and thus entitled to territorial rights.

In other words, Moorean peoplehood can exist independently of a state and create sufficient group agency or moral demands for holding territorial rights; whereas a Stilzean people, though retains the rights as well, is basically the incarnation of a state. This difference affects not only their proposals for the rights holder but also the kind of collective self-determination we should secure. Moore attributes the rights holder to her account of self-determining people and hence requires the state to safeguard the collective self-determination (i.e. associative duties) of its peoples. Stilz prescribes the state (or the people created by the state) territorial rights because it brings about the kind of self-determination that helps most subjects reach political autonomy. Due to this difference in account of collective self-determination and rights holder, it seems impossible to integrate the two theories.

However, I have shown in the preface that the value of collective self-determination has two dimensions, namely FSD and SSD. To reiterate, the former refers to how the state delivers a common life project, out of respect for basic justice and personal autonomy, shaping the prospect of majority population whereas the latter concerns whether subgroups' territorial group interests could be advanced, rather than suppressed, in the face of FSD's coercion. To morally achieve collective self-determination in a state, therefore, these two dimensions should co-exist harmoniously. And given that Stilz's account of self-determination explicates how a majority of subjects could realise their political autonomy individually under the state's legitimate coercion, Stilz's proposal explains not only the normative dynamic of FSD but also of state-led identity. This is because a state needs to construct a group identity that can motivate most of the subjects to carry out a joint project chosen, where this project should reflect the shared higher-order values that structure the state. Nevertheless, such a development should also be conditioned by or reconcile with subgroups' justified aspiration to collective self-determination which may diverge from FSD. This phenomenon demands another theorisation connecting to Moore's account of territorial rights; according to which some particular groups do have their group development or prospect distinct from what the states currently determine through a state-wide decision-making process. Such a result bases SSD upon Moore's collective self-determination and subsequently prescribes a state to respect a different view of self-determination by providing its subgroups sufficient institutional resource. Based upon these reasons, it makes perfect sense to merge Stilz's proposal with Moore's.

The mutual benefits of the combination also emerge when we explore how the dualistic account tackles the old problems in their original theories. Recall that Stilz confronts the problem of high similarity to Moore's provided that it advocates a loose definition of the state or less condition for group rights derivation. If Moore's idea is incorporated into Stilz's theory, Stilz can keep the statist advantage, namely the kind of collective self-determination that the modern state could legitimate and bring about, but also address the problem of close similarity of her account to Moore's. For the state could, on the one hand, acknowledge the importance of its institutional impact on the subjects' pursuit of political autonomy and yet on the other, recognise the territorial rights of the subgroups within its territory whose collective self-determination/associative duties should be given due protection. And given the recognition of the Moorean territorial rights, Stilz can put aside the concern about whether or not the condition for group rights derivation should be strict; because we now have sufficient theoretical resource to address the problem of status quo bias, which makes Stilz's theory passive to resolve some historical injustice. In other words, the historical injustice can now be dealt with more actively given that states recognise the territorial rights of their subgroups and so are obliged to render necessary correction as a way to protect the rights.[4]

Moore's theory can also be improved by taking some of Stilz's ideas into account. Recall that Moore faces the problem of under-inclusiveness when there exists unpopulated lands or some individuals who not only hold no group identity at all but also occupy a certain swathe of territory. The former may produce the perverse incentive to forced migration while the

[4] This will be further elaborated in section 1.3.2. when I illustrate how the dualistic view advances corrective justice with respect to historical illegitimacy.

latter makes a territory piecemeal like a cheesecake or tends to legislate assimilation policies. For the first situation, Stilz's distinction between core and ancillary territory and the reason for contiguous territorial boundaries can both be employed to account for the necessity of unpopulated lands. For the state may need ancillary territories connecting different core territories as the people have to take advantage of those unpopulated lands for the sake of transportation. That means the state's jurisdictional authority has to extend to ancillary territories even though those lands are not the communal areas of people or less populated. There is a moral reason not to place those areas outside the law. In terms of the second situation, Stilz's account of territorial sovereignty is more beneficial to explain why and how the jurisdictional authority should cover such a place. Because, despite the lack of identification with any particular subgroup, such individuals must rely upon the provision of institutions in order to secure their occupancy interests, the need for basic justice and political autonomy. Again, states derive their territorial rights not only by recognising subgroups' territorial interests but also by delivering the three core values which subjects require. Furthermore, such a normative basis would also help address another problem in Moore's theory: the worry of drawing unnecessary distinction between homeland and non-homeland peoples, which may generate unjustified oppression of outsiders' collective self-determination. By introducing Stilz's viewpoint, this worry can be mitigated given that a state is set up to be the impartial arbiter weighing between different conceptions of collective self-determination or looking for a balance between outsiders' political autonomy and subgroups' fulfilment of their associative duties.

As illustrated, even though the synthesis of Moore's and Stilz's theories may confront some incompatibility, the incompatibility can be removed as the dualistic account captures

precisely two dimensions of collective self-determination (viz. FSD and SSD) and tackles the old problems in the original theories. However, since the new account proposes to recognise two distinct kinds of territorial rights-holder, one might be worried about whether such a proposal makes a state territory unstable. This then becomes the task in next section.

1.2. Concern about instability?

To evaluate whether the new account would undermine political stability, it is first necessary to recall what territorial rights are. According to the jurisdictional authority view, whoever holds these rights should have the power to create/adjudicate/exercise jurisdiction over, to utilise the natural resources of, and to enforce border control over, a territory. As such, the doubt concerning political stability can be stated in two ways. First, if the state and subgroup can both be the rights-holder, a subgroup may easily secede from its host state because it has the power to establish its own jurisdictional authority by deciding that the current legal system imposed on it is illegitimate, revoking the old territorial settlement and erecting a new one. That is, were the subgroup to have the same (territorial) rights as the state, there would be a worry about the tendency towards territorial disintegration. Second, since my dualism of territorial rights also proposes another territorial rights-holder (different from the state), a swathe of land may be subject to two competing legitimate rights-holders (i.e. the state and a self-determining people) which, if their interests are incompatible, seems to needlessly create a new conflict. This reflects the worry about incompatibility of the rights-holders. Specifically, this worry may create a perverse incentive that states want to prevent the emergence of subgroups by imposing forced assimilation policies on certain subjects.

Clearly, we need to dispel this doubt. First, it would be an exaggeration to think that secessionists can easily achieve their end at will because the idea of territorial rights is never absolute and exclusive. If we are not excessively worried by the fact that the account that takes the state as the sole rights-holder may be undermined because the rights are constrained by certain moral limits, then the same thought should also apply to the dualistic account. That is to say, we can envisage a moral constraint on subgroups' exercise of territorial rights, which reflects a cautious and discreet attitude toward secession. It also implies that the constraint on subgroups could be different from the constraint on the state. Second, territorial rights do not conceptually contain the right to secede, whether or not such a right is understood as primary or remedial. What this concept entails is rather who has the final say on the jurisdictional matter; and yet what specific issue belongs to whose authority is nonetheless potentially variable. If it is the state, we grant authority to whatever emerges from the decision-making process at a state-wide level; if it is both the state and subgroup, we should distinguish the political issues attributed to the territorial interests of the subgroup from those of the nation, and give subgroups the final say on these issues. That is to say, even though the new account advocates two eligible rights-holders bearing the jurisdictional authority over a particular territory, who has the final say on the right to secede is another delicate question demanding a theory of secession, because any claim to secede inevitably concerns the interests of both (territorial) rights-holders.

Of course, thirdly, a criterion for the distinction and how it sheds light on the right to secede is necessary to clarify the duties or rights of the state and subgroup respectively if political stability is to be secured more satisfactorily. The more thorough and clear it is, the less worry we will have about territorial disintegration; for we can understand under what condition

territorial integrity should be upheld and when it should not. Emphasis on the complexity of secession does not mean the two kinds of rights are conceptually irrelevant, but it rebuts the charge of political instability as it recognises secession as a distinct matter that does not easily fall into the authority of either rights-holder. Therefore, the doubt about territorial disintegration can be dismissed if the condition for retaining integrity is articulated. The incompatibility problem can be solved if a further distinction between the rights of subgroup and state is made.

However, one may still be not satisfied with the general clarification on territorial rights and rights to secede because I have not provided a precise account of the distinction or the condition for upholding territorial integrity. The rebuttal is too general to remove the worry about political instability. What about the perverse incentive for the state to prevent the development of some group into a self-determining people, perhaps, because their population is too small to hold territorial rights? To supplement my stance, consider the following four elaborations.

Firstly, if we are really worried about such a perverse incentive, the best way is still following my dualistic account as we take the three reasons below into account. Because, first of all, Moore's account is necessary to identify any potential self-determining people despite that the group may be too small to form an effective government. Only if the potential candidates for such a people are identified can we understand whether or not the state is imposing forced assimilation. Second, we should follow Moore's suggestion that these groups are justified in acquiring necessary assistance to fulfil their collective self-determination even though they currently fall short of being a legitimate territorial rights-holder. For instance,

the state should provide sufficient institutional resources for their group development or other forms of self-determination less than self-government.[5] Third, Stilz's theory is also a powerful weapon holding out against the perverse incentive. Because she advocates the moral occupancy based upon each subject's (individual) interests in located life-plans and that states are obliged to protect not only the occupancy rights but also subjects' political autonomy. This means that states should help advance those people's aspiration to collective self-determination regardless of their capacity to hold territorial rights, provided that the individuals take their group development as necessary to their political autonomy. It is therefore shown that the perverse incentive to suppress any potential self-determining people would be better dealt with if my dualistic view on territorial rights is favoured.

Secondly, I have shown the pivotal principle of the distinction, namely, to distribute political issues in accordance with whose territorial interest is at stake. If a given issue is justified to be in the interests of subgroup, then they are entitled to have the final say on such a matter. Conversely, if a policy has a nationwide impact, it belongs to the state's authority. Again, if the matter is as intricate as secession, a theory is necessary. Thirdly, I have hinted that two sorts of territorial rights connect to each other while the associative duties of the subgroup are secured in a non-alienating manner. This is exactly the main condition for territorial integrity shaping the framework of justified secession (see the next chapter). Fourthly, the dualistic view is favoured not in virtue of the political stability it promises, but of the values it safeguards. That is to say, if the political instability is not as serious as it initially appears and

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the values it protects are important enough to override the worry about political instability, we can derive some good reasons to support the dualism view.

1.3. The values of dualism

Two values uphold the dualistic account, namely group autonomy and individual autonomy. First, the territorial rights of the subgroup are the very foundation of some significant minority rights, particularly if the rights manifest subgroups' territorial interests. Second, the new account not only offers a promising way of tackling historical illegitimacy but also advances both social and global justice by recognising more legitimate territorial rights-holders and protecting their rights. Let me account for these two values in turn.

1.3.1. The basis of multiculturalism

Before advancing my argument that the minority rights of a national minority or indigenous people are based upon their territorial rights, I shall review the argument for minority rights or multiculturalism. These are group-differentiated rights, broadly referring to the rights of a minority with respect to a majority of society, according to which the former is entitled to materialise conceptions of citizenship differently from the common or dominant one. Moreover, groups are distinguished by their different societal cultures, through which the cultures indicate 'whose practices and institutions cover the full range of human activities, encompassing both public and private life'.[6] Defined as such, a minority can refer to various

[6] Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1996), 75.

groups such as national minorities, immigrant groups, and suppressed ethnic groups or genders. Given the societal cultures of those minorities constitute or encompass most dimensions of their members' lives, the rights of multiculturalism are sometimes suggested as the basic of a new ethos of political institution ensuring the protection of minority cultures.

Yet how is multiculturalism justified? According to Kymlicka, the ethos is defended most convincingly in terms of the autonomy thesis.[7] The thesis is twofold. Firstly, the ethos is consistent with personal autonomy, which is the precondition of having a good life: being free to pursue the conception of goods that one believes in and values without arbitrary interference. Multiculturalism accords with this freedom because it safeguards the options and environment that an agent could reasonably and assuredly choose. For instance, a gay man can stay with the person he loves without stigmatisation only if society recognises their choices as valid and is willing to protect their conception of the good with legal means. Secondly, the ethos can further promote personal autonomy by ensuring a meaningful revision or development of one's choice, which reflects the morality of identity politics. Since the agent, say a member of national minority, can be raised within her own culture and speak the language without discrimination, she would have little difficulty in finding a lifestyle fitting her personality, for she is able to examine and make the decision she values among different societal cultures (including hers) after sufficient self-examination. Moreover, because she can cultivate her own culture without unjust interference, she has more options and confidence in her nationality through participating actively in her national activities. The flourishing of groups often correlates positively with personal development. In other words, under the

[7] *Ibid*., 80-84.

ethos of multiculturalism, personal autonomy is promoted as one's identity-based interests are further developed, by which self-respect in a multicultural society can be enhanced.

Subsequently, let me consider why multiculturalism is not enough and why we need to accord territorial rights to subgroups. One may wonder that, despite the fact that our modern belief in diverse society and cultural pluralism has prevailed worldwide, such a commitment only suffices to prescribe a policy of multiculturalism to states[8], rather than granting territorial rights to subgroups. What is the good of the latter prescription, then? It is also worth considering how Stilz's account might reply to the necessity of prescribing territorial rights to subgroups. She holds that the state's territorial rights are justified if and only if the three core values of the citizens as a whole are all secured. The political autonomy of subgroups has already been taken into account because it is surely a necessary condition for the political autonomy of *all* citizens. Thus, either the state fails to hold the rights over the whole territory if some of its subjects, such as a subgroup, cannot achieve collective self-determination through political institutions; or the state's jurisdictional authority over the whole territory is morally justified. There is no need to demarcate territorial rights between state and subgroup because we care only about whether the state's jurisdictional authority is justified in encompassing the territory it claims. It should be sufficient to prescribe some group rights other than territorial rights to subgroups in order to safeguard their territorial interests.

[8] As Tim Hall points out, following Kymlicka, multiculturalism should be endorsed because 'states routinely engage in such forms of nation-building in promoting an official language, establishing a core curriculum for education and creating citizenship tests for migrants', all of which indicate the unjust integration of different cultural groups within a state. State neutrality, which holds a clear demarcation between public and private affairs and treats the latter with benign neglect (i.e. laissez-faire) attitude, does not place the same weight on different ethnocultural groups. See Tim Hall, "Liberalism: the Pluralist State." In *The Modern State: Theories and Ideologies*, ed. Erika Cudworth, Timothy Hall and John McGovern (Edinburgh: Edinburgh University Press, 2007), 56. Will Kymlicka, *Contemporary Political Philosophy* (Oxford: Oxford University Press, 2002), 327-76.

How do minority rights connect to territorial rights? It is not hard to see that what I refer to as the territorial rights of subgroups corresponds to the rights of national minorities in Kymlicka's terminology. First, he defines the group as 'formed complete and functioning societies in their historic homeland prior to being incorporated into a larger state'.[9] Indigenous peoples or substate nations (such as Scotland) are cases in point. My understanding, following Moore's account of self-determining people, further advocates that a subgroup entitled to rights of self-determination can form their group identity not just out of their common past history before being incorporated into the host state, but also out of the alleged common political experience *during* subjection or incorporation over time. Second, while a national minority proposes, for instance, to revive their culture or language by designing a curriculum framed with their culture, we may ask why and how to implement such a policy. In addition to Kymlicka's autonomy argument for the proposal, Moore argues that the members' interests in culture or language rely massively on the protection and development of the group's territorial interests, which is based on particular bits of land. Of course, this does not hold in all cases. Yet when a national culture or language is to be revived or cultivated, its substance or content usually refers to an imagined community attached to a particular area, because language or culture is not maintained by a few individuals, collaborative work is necessarily at play. Furthermore, societal culture implies that members are acquainted with some shared conventions, the sustaining of which reflects the support of membership plus the alleged associative duties in the community. Since these duties are derived from securing the interests in the relationship goods of group, the goods reasonably

[9] Kymlicka, *Contemporary*, 349.

create a legitimate expectation to keep developing the group, namely discharging duties in the territory it currently occupies. In consequence, the minority rights of a national minority or indigenous people reflect a significant territorial interest that generates pro tanto moral claims based on territorial rights.

The same conclusion could also be drawn when pondering where to implement the policy. We might hesitate to extend the curriculum to a national level because firstly, asking a non-member to learn a culture or language not one's own is inconsistent with Kymlicka's autonomy thesis or Moore's idea of legitimate expectations, because the person does not belong to that minority. Moreover, it may be inadequate to force non-members to comply as this imposition interferes with their autonomy to pursue the culture they prefer. Secondly, institutional resources should be distributed in the most efficient and fair way. Provided that non-members have a need to secure their societal cultures and it is unreasonable to require each citizen to learn all cultures in a society, it is more economical to confine the policy to where the minority lives. Again, the commitment to the territorial rights of the subgroup is not only consonant with the value of multiculturalism, but also becomes the normative basis of some minority rights.

If the argument above is correct, a better reply to the potential challenge from Stilz can be summarised as follows: since some minority rights represent the holders' territorial interests, the rights are best protected by territorial rights, which should be distinguished from the whole territory of the state and posited in their residency. This claim also echoes my critique of Stilz's account, in which there is no moral justification of any subgroup's social inferiority caused by historical illegitimacy and according to which persistent alienation should be

recognised as a series of violations of subgroup's identity-related interests. Restoring the territorial rights of a subgroup not only strengthens the basis of minority rights but also helps rectify historical illegitimacy and empowers the subgroup to resist persistent alienation. In the next subsection, I shall exemplify how this happens as a tool for corrective justice.

1.3.2. Corrective justice with respect to historical illegitimacy

The dualistic account helps us to understand the problem of historical illegitimacy: I shall first revisit the moral significance of historical illegitimacy and then illustrate how my account explains how to redress such injustice.

1.3.2.1. Historical illegitimacy as deep structural injustice

None would deny that the extant boundaries of states are the outcome of a series of injustices. As I illustrated with Simmons's analysis in the first chapter, the historical illegitimacy of a claim over certain territory derives from the problem of wrongful subjection, where some subjects (including where they lived) were incorporated into the authority of states by unjustified force. The constitution of population and territory in most modern states is thus tainted by an unjust genesis which puts the moral legitimacy of their boundaries in question. However, I hold a different view from Simmons. Instead of thinking of this problem as something categorically distinct from structural injustice, I suggest viewing it as a form of deep structural injustice, thereby echoing Catherine Lu's insight that our current states/interstate system 'is a product

of the global expansion of a Eurocentric society of states and hence is itself a legacy of European colonialism'.[10]

According to Simmons, historical illegitimacy reflects an injustice in which some subjects are wronged by their states because the history or procedure of subjection has never involved their consent. This individualistic account of the will to submit to state authority should be distinguished from 'the injustice in the institutional rules of society's basic structure'[11], which, according to Simmons, is the concern about structural injustice. If the expression of consent is ignored or denied, it should be taken as a violation of personal autonomy. The wrong is further exacerbated given that states assert that their subjects are under a political obligation and prohibit secession. Since historical illegitimacy is conceptually distinct from structural injustice, this cannot be rectified through a just social structure (e.g. recall the imagined case of post-war Germany in Chapter 3), and the bias of structural justice would thereby mislead us as to the remedy proper. Setting history right is therefore, according to Simmons, the most 'natural' solution to the problem, a solution through which the states ought to return the freedom to obey to their subjects.

Nevertheless, the most natural is not same as the most plausible and I believe the latter should dictate the shape of the solution in order to derive a comprehensive solution. It is true that historical illegitimacy violates the autonomy of many innocent persons, and the claimed rights of the state against their subjects worsen the violation. Yet the injustice originating from historical illegitimacy develops, transforms over time and becomes entrenched in the

[10] Catherine Lu, *Justice and Reconciliation in World Politics* (Cambridge: Cambridge University Press, 2017), 195.
[11] A. John Simmons, *Boundaries of Authority* (Oxford: Oxford University Press, 2016), 50.

very structure of society. Also, the people whose consent was vital are now long gone, and thus the problem is a more complicated matter. One may then ask the following questions. Firstly, why should we be concerned with whose consent was most required? Should we instead accept the supersession thesis, according to which historic injustice, particularly the lack of consent by victims, can be superseded over time by virtue of the subsequent changes? Secondly, what does it mean to say that historical illegitimacy develops into deep structural injustice? Would such an assertion create a paradox in which I, on the one hand, point out that a purely functionalist account of state legitimacy falls short of addressing the moral right to self-determination; and yet on the other, articulate that historical illegitimacy leads to deep structural injustice, calling for the redress through statist functions? Let me account for the issues in order.

When I state that the people whose consent was vital have nearly all passed away, I am arguing against the validity of consent as an approach to corrective justice. In fact, the questions above are all about corrective justice as a concern, about how to reverse past wrongdoing and make reparation. Yet we have to recognise that not only may different historical injustices demand different solutions, but also different generations have different claims under the same type of historical injustice. For instance, my grandfather's claim to reparation for his persecution by the government should be different, in terms of the mode of reparation, from my claim to correct the wrong of my grandfather's suffering (provided my grandfather has passed away). Lu argues that there are two kinds of corrective justice: interactional and structural. Based on this distinction, I shall argue that the idea of consent is appropriate only to interactional justice *and* for the direct victim. The argument goes as follows. Firstly, interactional justice refers to 'the settling of accounts between agents for

wrongful conduct or unjust interactions, and for undeserved harms and losses or injuries arising from wrongful conduct or interactions'; [12] while structural injustice highlights 'institutions, norms, practices, and material conditions that play a causal or conditioning role in producing objectionable conduct or outcomes'.[13] For instance, if I speed, run a red light and strike a pedestrian, I should be responsible for that person as I imposed interactional injustice on them. Yet if I as a coach driver fell asleep at the wheel because the schedule forced me to work very long hours, although I should still be responsible for the accident in terms of interactional injustice, it should also be conceived as structural, as my wrongdoing was partly caused by the unjust background condition (i.e. an exploitative working environment).

The term 'direct victim' refers to the (first) generation suffering from the state's unjust subjugation. To claim that seeking the consent of this group is most important as a way of addressing historical illegitimacy means not only can the wrongful subjection be fixed but the reparation of other grave injustices brought about by the former (say invasion, conquest, or fraudulent purchase of lands) also depends on their consent. It is clear that these injustices are interactional, which refers to the wrongdoing of a state imposed on the victims without their consent. (However, I do not exclude the possibility that there is any structural injustice behind the state's wrongful subjection.) Of course, I am not implying that consent can solve all these interactional injustices. The approach is evidently not able to repair the harms in, say, military invasion or fraudulent transactions, which require other kinds of reparation. However, consent plays an important role because it is part of the efforts that the state ought

[12] Lu, *Justice*, 33.
[13] *Ibid*., 34.

to make to restore the lifestyle and collective self-determination of the victimised. Furthermore, consent is necessary and meaningful because the direct victim experienced substantial, transitional change, e.g. from nomadism to sedentary life, and consent reflects that they are entitled to self-determine which form of society they wish to live in.

In addition, interactional justice must be predicated by a clear and reasonable causality. For example, if I agreed to lend my friend my car and he then strikes a person through driving while fatigued, the wrong he has committed does not compel me to be responsible for the injury simply by virtue of my consent, because I merely consented to him/her driving my car, not to striking a person. There are surely two independent cases here: first, I have the right to claim reparation for the damage to my car, but because I have expressed the consent to let my friend drive my car, corrective justice should be limited to the restoration of the car; second, the innocent pedestrian has a claim to compensation for his/her physical harms due to my friend's error. It is evident that my friend is involved in the two cases, but the fact that I consented to let my friend drive my car does not establish a direct connection between me and the victim. Given that interactional justice is confined to the relationship between the participants in each individual case and consent as a solution to wrongful subjection is necessary and meaningful only in the case of direct victims, we should hesitate to expand the application of consent unless interactional injustice is implicated in the case.

The normative significance of interaction can also be found in Kant's ideas about the wrong of colonialism, despite his position that coercing others into a rightful condition (in this case, a state) is justifiable without consent. That is, while the latter account confers the right to coerce stateless people or any neighbouring people, it appears to counter the former account

in which the state should not expand to confront those groups (such as indigenous people) and compel them to be colonised or forcibly assimilated. How can Kant address this contradiction? There are two replies, in *Perpetual Peace* and *The Metaphysics of Morals.* In *Perpetual Peace*, Kant argues that a state proposing a conquest of stateless people should be deemed to be violating the concept of right, given that such a concept is the very reason that the state is morally justified.[14] The moral duty of the state, as previously pointed out, is to deliver civil social conditions for people in the state of nature. However, those states attempting to colonise or conquer stateless people are concerned only with the resource they hold in order to increase their political power. Moreover, this increase in power is reached at the sacrifice of some of their subjects' lives. That means the misconduct (colonialism or conquest) proposed simply satisfies the cynicism or private interest of the rulers, rather than the public interests of the people. Coercing stateless people contradicts what the concept of right demands.

A similar idea is articulated more explicitly in *The Metaphysics of Morals* when Kant describes how the acquisition of property is justified. As explained in the previous chapter, our rights to property can only be justified only if the state or the alleged omnilateral will attempts to forge a conception (of property) that most subjects commonly share. That is to say, in order to settle conflict between different conceptions of property right or justice, the state is justified in coercing the people concerned into its authority. Such coercion must take place naturally, by which, according to Stilz, it can only be justified if the interaction is unavoidable. A state should not actively approach stateless people to found a colony on their territory,[15] because

[14] Immanuel Kant, *Kant: Political Writing*, trans. H.B. Nisbet (Cambridge: Cambridge University Press, 1991), 102-105.
[15] Anna Stilz, "Provisional Right and Non-State Peoples," in *Kant and Colonialism*, ed. Katrin Flikschuh and Lea Ypi

the circumstance in question does not constitute an adequate reason for the establishment of a state. The rationale behind justifiable coercion without consent is that the security of rights depends on the cooperation of any person affected, because a person's will or social life is subject to the wills of others. The problem of the arbitrary will of others emerges only if, say, my action or decision is substantively influenced by them. Given that many historical conquests or European colonies did not follow this logic, by which the interaction with colonised or conquered societies is avoidable, there is no justified moral reason to compel them to submit to an authority they do not recognise. If such a moral reason is omitted in the case of forcible assimilation such as colonialism or conquest, the consent of the direct victim plays a pivotal role in justifying the wrong of such interactional injustice.

So, are the descendants of direct victims necessarily entitled to ask for the voluntary political (dis)association as a reparation for the wrongful subjection of their ancestors if the state fails to deliver restoration (including the expression of consent) that the direct victim deserved? The answer is 'no', because the mode of interaction with the state determines the method of reparation. The situation changes for subsequent generations, because, first, for the direct victim, the (interactional) justice due to *them* cannot be realised once they pass away, although we should do justice to the *event* in some form. Second, the injustice 'passed on' to the following generations becomes structural as they are born subject to the social structure that forcibly subjugated their ancestors and consequently determining their inferior political status compared to other groups. These two points highlight the background difference between the direct and indirect victim: the former was not subject to the state originally but

(Oxford: Oxford University Press, 2014), 207-8. See also Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1996), 53.

forced to be at some point, while the latter, though significantly affected by the suffering of their ancestors, was born to be subjected to the state within a social structure unjust to them. This difference allows me to infer that, in terms of interactional injustice, past injustice is irremediable if the state fails to redress it in time. Yet, this is not the end of story because the injustice would be entrenched in institutional or ideological structures, by which the irremediable interactional injustice would become deep structural injustice over time. Of course, such a conclusion does not mean that the subsequent generations would not also become victims of continuous interactional injustice. As the descendants of the direct victim, the interactional injustice of the state is highly likely to be imposed on them continuously. But the distinction between interactional and structural injustice or the emphasis on structural injustice just provides the very reason for that continuous interactional injustice, by which, if the injustice is to be rooted out, we ought to adopt different model of resolution from the one for interactional injustice because we identify some interactional injustice is caused by and deeply entrenched in deep structural injustice.[16]

It's worthy of note that the injustice of wrongful subjection, identified by Simmons, comprises of two or even three conceptually different wrongs if we apply the distinction between interactional and structural injustice to the issue. Conflating them overlooks that different forms of injustice require different solutions. First, the direct victim has suffered not only from interactional but also from structural injustice because they confronted the state's unjust repression and were forcibly incorporated into social structures that mistreated them. This

[16] For the similar view, please see Tommie Shelby, *Dark Ghettos*, (London: The Belknap Press of Harvard University Press, 2016), pp. 2-4. In the book he proposes a systemic-injustice framework in contrast to the alleged medical model. Despite both approaches aim to address social problems, the former is necessary if the problem is demonstrated to connect to the background structure of society.

victimisation clearly contains both interactional and structural injustice. Second, the indirect victim (or the descendants of direct victims) has suffered from the unjust social structure, although whether the state interacts with them unjustly, say via discriminatory policies, depends on scrutiny case by case. What this group has suffered is certainly structural injustice, but interactional injustice may not necessarily come into play. Third, any other subject who has never expressed their willingness to be subjected can also be conceived as having suffered wrongful subjection, referring to a kind of structural injustice because the structure of state legitimacy is undermined by unjust historical development; Simmons says that one may understand such a wrong as interactional because subjection without consent is an unjust interaction. When articulating the problem of wrongful subjection, Simmons refers to these three groups but by and large illustrates the wrong in terms of the first two.[17] As only the first group is most plausibly entitled to the use of consent, we should not conflate all three together and wish to solve these different injustices simply by appeal to consent.

One might take the argument above as support for the supersession thesis, from which historic injustice may be superseded by some present changed circumstances and so we can claim nullification of the injustice. To clarify, the argument does not advocate such nullification because, after all, the injustice in question still persists. It has not disappeared but transformed into deep structural injustice.[18] This transformation returns us to Catherine

[17] For instance, when Simmons explains Thoreau's civil disobedience, he argues that it is not only because a citizen should not participate in the affirmation of unjust social structures, but also by virtue of the morally questionable authority of state over each subject. Such readings surely encompass the three groups in question. And yet when Simmons attempts to show how problematic the injustice of wrongful subjection really is, he appeals mainly to contemporary Palestinians and Native American tribes. See Simmons, *Boundaries*, 36-58.

[18] My understanding of historic injustice and why we should adopt a different approach to descendants of direct victims corresponds to Simmons's clarification, in which the supersession thesis should not be confused with 'our eminently plausible conviction that moral rights may be overridden,' by which 'we may sometimes have to violate moral rights in the interest of pursuing a more pressing, competing moral goal.' *Ibid*., 158-59.

Lu and her investigation on how the colonial history still haunts our pursuit of social and global justice. According to Lu, 'the state-centric institutions and practices of global governance reflect deep structural injustices that emanate from the colonial origins of the modern international order'.[19] Modern states in Africa are a case in point, as their boundaries were the consequence of negotiations among European powers during 1884-85 for the sake of the European power balance in the continent. There was no consideration of Africans and many modern ethnic or territorial conflicts, such as the Eritrean-Ethiopian war beginning in the late twentieth century, can be attributed to such a legacy. Other countries in Asia suffered from the same phenomenon. For instance, Taiwan was the colonial stronghold of the Spanish Empire and the Dutch East India Company in the seventeenth century, forcibly incorporated into the Chinese Empire in the eighteenth, and ceded to Japan as colony from the late nineteenth to the mid-twentieth century. Contemporary problems in Taiwan, such as identity disorientation and territorial disputes with China and Japan are the legacy of colonial history and structure the very framework of public discourse in Taiwanese society. A final example is the egregious injustice done to the Rohingya people in Myanmar in recent years, which is yet another colonial legacy, this time of the British Empire, which manipulated the ethnic composition on the land. Thus we can see that historic injustices such as colonialism, if not properly addressed, can transform the initial unjust interaction into persistent and deep structural injustice. Lu concludes that,

> when structural injustices inform laws and norms, shape the design and purposes of institutions and social practices, and produce material effects, they enable, legitimise,

[19] Catherine Lu, "Decolonizing Borders, Self-Determination, and Global Justice." In *Empire, Race and Global Justice*, ed. Duncan Bell (Cambridge: Cambridge University Press, 2019), 252.

normalise, and entrench conditions under which structural and interactional injustice may persist on a regular and predictable basis.[20]

My account of historical illegitimacy is not only against the supersession thesis with respect to historic injustice, but also notes how it continues to sabotage our pursuit of justice. In fact, the reason Simmons may overlook this deep structural injustice derives from his conception of injustice. He regards the idea as incapable of addressing wrongful subjection because it is confined to the political institutions of a state or society as a whole. Influenced by Rawls's ideal theory, this conception is envisaged and applied to an isolated society. Yet while emphasising the unjust history of state formation, it makes no sense to restrict our understanding of structural justice to this narrow, closed-society view at a non-ideal level. If, as I have shown, the past unjust state behaviour was partly caused by some higher-ordered (ideological or institutional) structure, and our contemporary injustice is still haunted by these events and structures, then a perspective of structural justice is certainly an useful way of solving the historical problem, indicating the decolonisation is a lengthy process, rather than a simple and swiftly-reached goal and we are still on the way to complete that process.

1.3.2.2. Rectifying historical illegitimacy with the dualistic account

My dualistic account of territorial rights therefore addresses the problem of wrongful subjection by firstly recognising it as deep structural (global) injustice and then providing the victims (i.e. the subgroups) with the necessary capacity or power to restore their entitlements,

[20] Lu, *Justice*, 35.

including self-determination. I have already explained the first part at length. Now let me proceed to the second.

The benefit of the new account is that it supplies the necessary capacity to restore the entitlements of the victim of historical illegitimacy without recourse to consent. The argument is as follows. First, conceiving historical illegitimacy as deep structural injustice implies that restricting the holding of territorial rights to the current states is a statist bias, reflecting and reaffirming the wrong of colonialism. Second, given the insistence on the current practice of territorial integrity and the deep (global) structural injustice conditioning the behaviour of each state[21], neither the respective states nor the extant form of international scheme (which is dominated by the current, recognized states) can address territorial conflicts positively. Call it the problem of statist inertia. Third, in order to break this inertia and thus enhance the international order, the subgroups who fall short of self-determination and suffer from wrongful subjection are entitled to territorial rights against their states. To remove the unjust global structure, the statist conception of territorial rights should be loosened by recognising other legitimate holders of territorial rights. The dualism of territorial rights responds to this demand.

While there is no need to argue whether an institutionally unjust state (say, a totalitarian or authoritarian regime) would be committed to reforming global justice, let me firstly consider whether a well-ordered society would experience statist inertia against global justice. An

[21] That is, (1) a state's sovereignty and claim to territorial integrity becomes inviolable and unchallengeable once it achieves international recognition as a sovereign unit, even if it fails to meet a normative account of state legitimacy over time; (2) some states can take advantage of and gain benefits from the global unjust structure so are unwilling to improve the unjust international structure.

internally legitimate and just state is entitled to the statist territorial rights on which the state has exclusive jurisdictional authority over a particular population and territory and against the interference of others in domestic affairs. On this view, the pursuit of global justice is actually the promotion and spreading of social justice. This is the Rawlsian account, the 'Law of Peoples', according to which peace and human rights would be secured almost everywhere when most societies, by the definition of a well-ordered society, have already achieved social justice, whereas the alleged outlaw states would be forced to reform their institutional structure under the sanction of the league of (nearly) just societies.[22] This account, as I have argued, apparently ignores its partial understanding of state legitimacy: the problem of wrongful subjection cannot be rectified merely by the reform of social structure, because some deep socially structural problem is related to or caused by the unjust global structure. Furthermore, our contemporary international order, which is similar to that of the Law of Peoples, has shown much evidence of its impotence in terms of protecting human rights, because there is not much incentive for states, even the well-ordered, to act upon humanitarianism instead of national interests.[23] If a sanction on an outlaw state were to contradict the national interest of acting states, most states would be reluctant to impose the sanction. At times, states impose sanction, not for humanitarian reasons but from national interest. After all, the idea of a well-ordered society guarantees only the realisation of rights on its territory, rather than considering the globe as a whole. This refers to a theoretical flaw

[22] This refers to John Rawls' proposal for international order. See John Rawls, *The Law of Peoples* (London: Harvard University Press, 1999).

[23] In June 2019, the UN chief accepted the independent report on the human rights crisis of the Rohingya people in Myanmar. The report concludes that the overall UN system has been 'relatively impotent to effectively work with the authorities of Myanmar, to reverse the negative trends in the areas of human rights, and consolidate the positive trends in other areas'. See "UN chief accepts independent report on Myanmar, highlighting 'systemic' failure surrounding Rohingya crisis," UN News, accessed 30 June 2019, https://news.un.org/en/story/2019/06/1040681.

of the account that without the construction of global authority over international and humanitarian affairs, the Law of Peoples would be contested and undermined by the semi-state-of-nature background conditions, under which any commitment to global justice would suffer from indeterminacy, moral disagreement and unilateralism in global order.

Another more promising account worthy of consideration advocates that the alleged statist global order or territorial rights are justified provisionally and conditionally insofar as the state is committed to establishing a global authority conforming to some cosmopolitan moral principles. Lea Ypi may be the most well-known theorist holding such a view, who posits the argument on the principle of permissibility. Adopted from the Kantian idea of permissive laws, the principle applies to the circumstance in which an act is permitted, even though it violates principles of right in general, because it is also 'subject to a commitment to bring about states of affairs which realise the idea of equal freedom, and for as long as principles of right are not in place'.[24] The rationale for having the state is a case in point and Ypi tries to apply the same logic to the acceptance of statist territorial rights as a premise for just global order. Recall that in the state of nature, persons possess their property unilaterally, by which they not only hold different conceptions of property rights but also different understandings of how to reconcile any conflict about the relevant matters. This lacks a practical authority to determine such issues, so the appeal to the state is necessary and morally justified. Yet before the establishment of rightful condition, because no commonly-shared authority can be appealed to in order to settle the issue, people can only recognise the current holding of each other provisionally on the condition that the public, omnilateral order alongside the state will be

[24] Lea Ypi, "A Permissive Theory of Territorial Rights," European Journal of Philosophy 22 (2) (2012): 288-312, p. 290.

formed to resolve their conflict. The idea of permissibility thus indicates the mode of behaviour necessary in a transitional phase in which some moral hazard or historical wrong plus the settlement of such problems have to be granted or suspended until the transitional period is overcome and a just background structure is established. Applying the idea to territorial rights, Ypi argues that the states' current claims to territories are justified provisionally and conditionally if and only if they commit themselves to forming a global order realising cosmopolitan justice applying to all human beings and places.

However, Ypi's proposal faces a problem of statist inertia for the following reasons. Firstly, the proposal envisaged for the sake of global justice seems to circumvent the concern about internal self-determination or significance of constitutions too easily, as it both purports to delegate the issue to a global authority, and yet permits the (provisional) justification of statist territorial rights.[25] This gives rise to at least two problems. Generally, it makes the normative relation between a global authority and how it should address the issues of collective self-determination an open question. It is a potential worry that such an authority cares only for the provision of basic justice and so ignores the value of collective self-determination. Moreover, while the idea of territorial rights entails the right to prohibit secession, the permissive account asks the victims of wrongful subjection to forbear their claim of self-determination until the establishment of a global authority. This clearly risks statist inertia because it neglects the simple fact that constitutional democracy (plus perhaps the

[25] Ypi holds this position, articulating that 'permissive principles should be understood as transition principles; they can be retroactively invoked to justify a unilateral past acquisition in the absence of rightful conditions of reciprocal interaction' and 'once the mechanisms for a rightful distribution of territorial claims [i.e. a global authority] are in place, the wrong of unilateral settlement ceases to be absolved…it requires states to submit to the rules of a collective authority adjudicating the distribution of territorial claims according to principles of right.' *Ibid*., 305.

coordination with states at the periphery if necessary) can theoretically address internal self-determination, including a claim to secede, without recourse to global authority. It refers to one of the statist functions: being an omnilateral arbiter on public, domestic affairs. As long as a theory can show that internal state legitimacy on territorial boundaries is not as solid as it might be presumed to be, a state should not only comply with the establishment of global authority, but also recognise other rights-holders within its territory and thereby assist in fulfilling their claim to self-determination through an impartial and just procedure, namely a constitutional scheme. Such recognition then leads us to the second cause for statist inertia: the representative problem in the creation of global authority.

This authority is normally under the control of majority or advantaged groups, making the institutional design by and large partial towards their interests. The representative problem accordingly invokes the practical concern that if some extant states could not truly represent the subgroups they claim to govern (because their territorial rights are not protected by the host states), a global authority thus created would fall short of representing all human beings. Without recognising that there are more legitimate territorial rights-holders than the extant states, by which they are also entitled to shape global authority, the same partiality would not only happen but worsen in the exercise of global authority. This has already occurred in the case of unrecognised but de facto independent states as those anomalous entities are excluded from recognition within the international system. Their interests in global order are always misrepresented by some other (UN-recognised) countries, which results in peoples in unrecognised states often being beyond the reach of international law and thereby unable to

remove threats to their external self-determination.[26] To establish a just global authority, it is necessary to take the representative problem into account. Just as the state should recognise universal suffrage, we should also recognise any legitimate agent as a potential subject to global authority, which no doubt includes subgroups within a state. Therefore, even though Ypi reformulates the orthodox account of territorial rights with the principle of permissibility and the commitment to global authority, statist inertia still plagues the proposal and this makes corrective justice to historical illegitimacy unlikely in her approach. Thus, we should enlarge the recognition of territorial rights-holders, by which the exercise of a global authority should be conditioned by the territorial rights of subgroups or Stilz's three individual core values (i.e. occupancy rights, basic justice and political autonomy).

My dualism of territorial rights would meet this problem by recognising the rights-holders within or even across states and so reforming social and global order with a sufficient and qualified number of participants. There are two ways of understanding my approach. Firstly, the state as a kind of public, practical authority should proceed to devolution by recognising the territorial rights of subgroups within its jurisdiction. This also means that the state should embark on constitutional reform (i.e. multinationalism) in which both sides (i.e. the state and subgroups) are entitled to equal status when determining who has jurisdictional authority over what matters on what land, as well as a new and fair decision-making process for national issues. The dualistic account addresses the problem of wrongful subjection firstly through a reform in constitutional structure that decentralises the power of current states and restores the subgroup's claim of self-determination, including legislation on the right to

[26] Nina Caspersen, *Unrecognized States* (Cambridge: Polity Press, 2012).

secede. However, the above social-justice measure cannot address the deep structural injustices stemming from the unjust global order. As such, secondly, my account follows Ypi's permissibility approach that all qualified territorial rights-holders have an obligation to help establish and deliver a just global authority if they want to maintain those rights. Although, if the social-justice manner is followed, some subgroups' self-determination can be fulfilled, it still falls short of taking proper account of the interests of transboundary peoples or the need for boundary-redrawing. Such a concern refers to some indigenous people whose traditional territory is situated alongside the cross-border region between two states, or some ethnic group who used to share the same political institutions and yet now is carved up by different states, such as the Sinixt living around the US-Canada border and Kurds whose living area includes Turkey, Iran, Iraq and Syria. So, while there are still many peoples whose self-determination has to rely on international cooperation and the appeal to a global authority as omnilateral arbiter, my account empowers all qualified, legitimate territorial rights-holders to engage in drafting terms and conditions on how to set up the limitation of global authority, the duty to realise cosmopolitan justice, the decolonisation of extant global order and the re-evaluation of the substance of territorial rights (i.e. what the rights consist of).

Why and how would my dualistic account deconstruct the substance of territorial rights? I concur with Lu that we should discard our insistence on the exclusiveness and unilaterality of territorial rights if we really aim to resolve humanitarian crises and reconcile different agents' claims to self-determination.[27] For while human territoriality reflects how human beings utilise border control as a way of living, any redrawing of boundaries should nevertheless be

[27] Lu, (2019), 267-68.

sensitive to changes in circumstances. Given that modern lifestyles change rapidly, any proposal for hard and permanent borders may quickly become outdated and impede the evolution of human territoriality. As my proposal re-conceives of the state as having plural agency, namely multiple territorial rights-holders co-existing in a territory, the account helps emancipate the idea of territorial rights, nudging the rights-holders towards abandoning the traditional, statist understanding because, borrowing from Stilz, they are now compelled to accept that it may be easy to confirm the boundaries of their core territories, but not of the ancillary. In other words, they are more willing to reconsider the value of unilateral border control and the exclusiveness of sovereignty because the boundaries between the rights-holders are more and less overlapping, indicating that they should loosen political control over the borders between the overlapping area of ancillary territories if territorial conflicts are to be prevented. Of course, the potential above depends on the establishment of a just global authority, taking the territorial rights of subgroups into account. Yet the key point of territorial justice should not be confined to the creation of global authority, which is envisaged to settle secessionist movements or redraw state boundaries in a just way, because the boundaries are more or less arbitrary, e.g. an outcome of compromise, or only reflect the interest balance between each side modus vivendi. We should rather change the focus to empowering each legitimate agent to negotiate this issue without suppression and ensure communication with each other is genuine. I believe the dualism of territorial rights can achieve this goal effectively.

Let me summarise my approach below. On the one hand, the newly-recognised territorial rights-holders are the countervailing force against the statist conception of territorial rights, by which they, normatively and realistically, obtain the necessary bargaining power and moral

status to re-negotiate their conditions of self-determination (including the demand for corrective justice) in the parent states. On the other, since being recognised as a legitimate representative in the construction of global order, they are entitled to international legal aid and the standing to suggest the redrawing of boundaries not only with their parent states but also other relevant states. Finally, these features both suggest loosening the statist conception of territorial rights, by which we can truly liberate the (structural) arbitrariness of boundary-drawing and realise global justice as a legitimate global authority is built.

2. Further clarifications and implications

Before closing this chapter, a few clarifications must be made, to prevent misunderstanding. First, my dualistic account is really a sketch devised for the preliminary framework of justified secession. That is to say, the account is far from complete and comprehensive, as it lacks any account or elaboration of natural resources and migration, both of which are necessary to a theory of territorial rights. Even though I advocate that states' extant territorial boundaries should be contested and we should not endorse the exclusiveness and unilateralism of border control, my account says very little about, for instance, the entitlement to control over or benefit from natural resources, and under what condition a state can exercise the right to exclude. However, this does not undermine the validity of my proposal, because much of the discussion is related to distributive justice and the reconciliation of citizens and non-citizens.

Secondly, while territorial rights as a normative idea are concerned with the subject and object of jurisdictional authority, and how strong the control should be, the delineation so far seems to focus mainly upon groups instead of individuals. One may question how my dualism

deals with individual dissidents. Do states have a justified jurisdictional authority over someone who identifies with neither a nation nor a subgroup, and has never expressed its consent to submit to its state? There are two ways of responding to this. First, following Moore, a theory of political territory should prioritise 'how territorial rights arise, not an account of how political authority over individuals arises'.[28] I subscribe to the jurisdictional authority view, namely, the relationship between states and territories is embedded in the relationship between states and subjects.[29] An account of territorial rights can presumably put aside the concern of political obligations/authority because the former is primarily concerned with whether and how a government body can continue to sustain and develop a judicial system in a certain land, whereas the latter concerns whether the subjects are obliged to obey the law. An account of obedience and of creating a legal system should perfectly match only if we prescribe the understanding of jurisdictional authority to a consent-based political authority. In other words, if the justification of political authority is not based upon consent, the justification of territorial rights likewise would not be undermined by individual dissent. Since my dualistic account is not based upon a consent theory, individual dissidents do not undermine my proposal. Second, it would be a misunderstanding to regard the dualism of territorial rights as a collective-based account. While I incorporate Stilz's theory into my account, it accommodates any individual affiliated not with a national or subgroup identity (or both). Moreover, Stilz's idea of peoplehood makes the identification with a state-wide identity a situation in which people embrace the political institutions realising their basic justice and political autonomy. As such, what matters here is not whether the state derives the subjects' consent, but on what grounds the dissidents can challenge or revoke the

[28] Margaret Moore, *A Political Theory of Territory*, (Oxford: Oxford University Press, 2015), 62.
[29] Simmons, *Boundaries*, 29-30.

territorial rights of states. Shown in the previous chapter, if their disobedience violates the value of basic justice or personal autonomy, the state has the authority to coerce their compliance and so the hold of territorial rights is still justified. Yet if persistent alienation is inflicted on the dissidents plus the way of remedy would not violate the above two fundamental values, the state's territorial rights are indeed undermined, by which secession may be justified potentially. The detail of such consideration will be further analysed and addressed in the next chapter.

Recall that there are three fundamental questions connecting territorial rights to an inquiry of secession. I shall then provide adequate responses based upon my dualistic account. The first and second fundamental questions concern how to counter most states unjust genesis and how to evaluate rival claims to the same territory. My proposal articulates two main values for political/state territory and addresses the concerns by advocating that, in terms of drawing boundaries, the two values should be at most instrumental to both secessionists and states. Firstly, political territory is important because, according to Stilz, it brings about political autonomy, which is a necessary condition for personal autonomy; and by virtue of Moore's theory, it helps realise the associative duties of self-determining peoples living inside a state. These may be taken as the intrinsic values of state territory. Nevertheless, secondly, how to draw the boundary inevitably involves some arbitrariness, which suggests that we should loosen the traditional idea of a territorial boundary and change the focus to empowering each legitimate agent to (re-)negotiate the matter as necessary. Based on this, the resolution to wrongful subjection (i.e. the unjust genesis of state) and the evaluation of rival territorial claims should be a matter of genuine communication between the relevant agents. Any normative theory should restrain itself from giving a rigid account favouring

either sides (i.e. secessionists or the state). Stilz identifies two kinds of territory (core and ancillary) and argues for the importance of contiguous boundaries combining the two. Yet the value is instrumental as it is endorsed for the sake of administrative efficiency, not to mention that it had been abused as an excuse for conquest and fraudulent land transactions during the development of states. Moore conceives territorial boundary as manifesting the communal border of self-determining peoples, but such a view is still instrumental because the living areas among different peoples may overlap or some weightier moral reasons might override the idea of a hard border. For example, when she considers some country with a contested territory, say Kashmir, the connection of group identity to occupancy falls short of giving precise guidance on boundary-drawing, since the land is populated by many different ethnic groups. Moreover, a referendum on secession is not a promising solution because the situation is very complex both politically and socially, and a fair vote is unlikely. Under these circumstances, Moore suggests that some imaginative form of power-sharing is necessary, to involve,

> not just the withdrawal of a heavy Indian army presence and a referendum, but military withdrawal combined with the creation of political space in which Kashmiris can develop relationships and understandings amongst themselves about what kind of relationships they want.[30]

As illustrated, boundary-drawing only has instrumental value and should be reconciled with other moral considerations if the reality deviates from theory. This leads naturally to my

[30] Moore, (2015), p. 126.

proposal that, instead of devising a perfect theory of boundary-drawing, we should delve into how to empower each legitimate agent to raise and negotiate the issue and to make the communication authentic and impartial. I believe the thorny issues such as wrongful subjection or the evaluation of rival territorial claims can be better addressed by such an open account.

The third fundamental question asks, 'how can we reconcile people's right to self-determination and the state's claim to territorial integrity?' My resolution is to argue that a qualified claimant should first be a qualified territorial rights-holder in order to reasonably contest the state's claim to territorial integrity. Firstly, as pointed out in Chapter Two, a theory of secession must also provide a reason why a certain area of land is claimed by some group (i.e. the claimant) rather than another bunch of individuals residing on the land. My account not only echoes such a necessity but articulates the reasons in terms of the interaction and balance between FSD and SSD. That is, secondly, the dualistic account accounts for the concerns in a reciprocal way. On the one hand, while looking at how the state may lose its territorial rights (i.e. FSD), the account refers to the condition in which a subgroup within the territory suffers from persistent alienation. So, the state fails to claim jurisdictional authority over the area where the victimised resides when persistent alienation takes place within the subgroup. On the other hand, from the perspective of a subgroup (i.e. SSD), secession can claim certain land legitimately because the land manifests their group identity and communal life. Specifically, the land is a precondition for discharging the associative duties stemming from group membership. Given that individuals cannot live without their communal lifestyles, their legitimate expectation to develop and continue their lives upon their occupied land thus becomes sufficient reason for realising secession on the claimed territory. As such, my

proposal not only points out under what conditions a state should forfeit the territorial rights to certain land, but also identifies how a claim of secessionists to particular land is justified. Both imply reciprocity between the state and subgroups, in which the latter should submit to the jurisdictional authority of the former if and only if the exercise of that authority follows my dualism of territorial rights. This no doubt provides the normative basis of rights and duties that both secessionists and states should abide by, according to which we understand how to reconcile the right of self-determination (which includes the right of secession) with the right to territorial integrity. That is, a qualified claimant to secession should count as a legitimate territorial rights-holder, because the qualification of the latter renders the criteria for revoking a state's claim of jurisdictional authority over a particular swathe of land.

3. Conclusion

In conclusion, let me briefly review what I advocate in this chapter. First, I identify two types of self-determination with two kinds of identity, FSD and SSD, on the basis of which it is beneficial to merge Stilz's theory with Moore's. Second, under Stilz's principle of non-alienation, the synthesis would not provoke political instability such as unlimited secession, although it aims to destabilise the jurisdictional authority of current states. However, thirdly, the cost is necessary and can bring about two important values: multiculturalism and corrective justice. Particularly, corrective justice is both backward- and forward-looking. We care not just about reparations to the victims of historical injustice, but also the unjust global structure constituted by the legacy of colonialism. Given the commitment to protecting territorial interests of the two identities, my dualism of territorial rights therefore meets the demand by recognising the territorial rights of subgroups, encouraging constitutional reform

within states and the construction of global authority (securing both the ideals of justice and collective self-determination) supported by all legitimate territorial rights-holders. Finally, I admit that my dualistic account is far from comprehensive but sufficient to be the normative foundation of justified secession. The validity of my proposal is not undermined by its lack of accounting for natural resources, migration and individual dissidents. Moreover, I illustrate how my understanding of territorial rights helps connect it to justified secession. Political territory is valuable as it constitutes the background social condition of personal autonomy and safeguards the associative duties of a subgroup and yet neither can claim an intrinsic value of territorial boundary alone, by which we should, again, commit ourselves to empowering each legitimate territorial rights-holder to raise a genuine and mutually respectful negotiation on boundary-drawing with other relevant agents. In addition, the dualistic account confirms that a qualified claimant to secession should be a territorial rights-holder necessarily because the examination of a claim to certain land and the rights and duties of states and the claimant are all based on a theory of territorial rights.

However, there are still some indeterminate and crucial issues. First, I have not clearly specified group agency in my dualistic account, even though the relevant entity (a "people") in question is accounted for already, whether we apply Stilz's endogenous peoplehood or Moore's self-determining people. Since the exposition of a qualified claimant to secession is to be articulated in the next chapter, I will delineate the concern about collective agency then. Secondly, as I still value each local state as the primitive omnilateral arbiter and their legitimacy of constructing a state-wide identity, I shall spell out further the terms of how a state sustains harmony with the territorial rights-holders within its territory. Firstly, I shall evaluate whether my dualistic account of territorial rights entails the right to prohibit

secession, and if there is such a right, under what conditions it may be exercised. Subsequently, I shall further the investigation into the nature of the right to secede and into principles for justified secession. What normative principle we can derive from the dualism of territorial rights is the task of the next chapter.

Chapter 5: The Principles for Justified Secession

0. Preface

There are two tasks in this chapter: (1) to illustrate the philosophical foundation of the principles for justified secession; and (2) to articulate under what conditions the principles would apply, so that we have criteria to judge when a claim to consensual or unilateral secession is justified. Such an endeavour correlates with, but is distinct from, the aim of the next chapter, which revisits the right to secede in light of the investigations undertaken here.

In the first section, I shall outline the principles for justified secession. Two sub-principles taken together constitute the main principle, reflecting two alternative readings of the main principle. This fundamental principle (i.e. the non-alienation principle) has its normative basis in a conception of personal autonomy associated with self-realisation. This account will then be applied to politics, connecting to Stilz's idea of political autonomy and Moore's idea of a self-determining people. This will shed light on why persistent alienation should be taken as a serious violation of territorial rights, and therefore a legitimate ground for secession.

I will then extend the above account to the issue of secession in the second and the third sections. I suggest recognising a normative continuum from consensual to unilateral secession. The main principle could entail two subprinciples, according to different degrees of violation. The less serious violation (i.e. structural alienation) pertains to the first subprinciple and justifies a claim to consensual secession, while the more serious violation

(i.e. existential alienation) relates to the second subprinciple and unilateral secession. Derived from Lu's account of self-determination, structural alienation indicates that a social structure deprives an alienated group of the power to participate in society meaningfully, while existential alienation reveals a more serious problem in which the victim suffers from something like aphasia, becoming incapable of self-understanding or performing authentic actions in a society. The term 'genuine communication' is used here to refer to the objective of any means to address these problems, empowering all subjects or subgroups to achieve self-realisation and implying that the state should protect or facilitate genuine communication between subjects/subgroups. In addition, the reliability of government or constitution also underlies the two sub-principles. Even in a situation of structural alienation, we should still assume that government is trustworthy, because such a wrong merely entitles the victim to rectify their condition of self-government (which may or may not include secession).

Consensual secession here may be a form of political leverage to force the government to resolve the structural alienation. Violation of the second subprinciple suggests that the government or constitution cannot be relied upon to address the problem, because existential alienation indicates a long-term bias of the majority against the alienated group, implying great potential for grave injustice. It is reasonable for the group to give up on negotiating with the government and instead claim unilateral secession in order to avoid such injustice. This, then, suggests that the first subprinciple implies the value of structural dignity. The state should recognise each subgroup's pursuit of this by, for instance, distributing identity-related resources (such as what language should be learned at school or whether the government can promote the practice of a particular religion) fairly to all subgroups in society

to address structural alienation. If the state cannot recognise a subgroup's structural dignity, consensual secession must be considered as a solution. The second subprinciple, given that the state is no longer reliable, reflects not only a safeguard against existential alienation but also a sign of grave injustice, both of which justify a claim to unilateral secession, proposing the establishment of a society that will achieve genuine communication.

To finish the chapter, I will articulate the idea that even though my principle shares or can be associated with the ideal of non-domination, it still bases itself on non-alienation as its core rationale, because the justification for secession should be a serious infringement of self-realisation, which stresses the importance of social equality. Non-alienation plays a role in manifesting this social dynamic, while the ideal of non-domination alone cannot fully account for or protect the value. My arguments will be illustrated by looking at the 2019 protests in Hong Kong.

1. The fundamental principle: The principle of non-alienation

In my dualism of territorial rights in Chapter 4, I echo Stilz's proposal that the normative basis of justified secession refers to the resistance to persistent alienation. It then entails the non-alienation principle, articulating that the state's territorial rights fail to be upheld whenever its exercise of power inflicts persistent alienation on a subgroup (as defined by a common group identity, a history of political cooperation and the capacity to form a government), by which the alienated group is unable to realise their collective life as they wish. As such, this fundamental principle reflects a positive claim against the state, whose duty is to help to advance or secure the associative duties of a subgroup within its territory in a non-alienating manner. Such a claim reflects the idea that the subgroup is entitled to meaningful or genuine political participation in society.

On this view, I define the non-alienation principle (henceforth, P_{na}) as follows:

> P_{na}: Insofar as a subgroup G (as a qualified holder of territorial rights) is subjected to the political authority of a host state, G is entitled to *the fulfilment of its SSD/associative duties in a non-alienating manner*.

'Non-alienating' safeguards against persistent alienation. Yet to what extent a group is alleged to be alienated from genuine political participation or how alienation can be taken as a normative criterion for a claim to secede is still under-theorised in the previous chapters. To address this theoretical deficit, I make the following proposals. First, it is grounded on a more fundamental value, namely personal autonomy. Second, the fulfilment of personal autonomy

has to be situated within a particular social context associated with Stilz's proposal for political autonomy. Yet, third, because how an individual secures its political autonomy is conditioned to a great extent by how the group to which it is attached achieves its collective autonomy in the host state, whether the associative duties of the group can be performed in a non-alienated fashion should then be a normal condition under which secession would be justified, in response to the need to safeguard territorial rights.

1.1. Non-alienation as a political ideal: Personal and Political autonomy

Applying the concept of alienation to secession gives rise to two points. First, it actually implies a political analogue to personal autonomy, by which the ideal of personal autonomy should map onto our social, political joint venture. In other words, the organisation of political institutions (on a state territory) should manifest the shared, deliberate judgements of the subjects. This ideal is what Stilz terms political autonomy, which can be associated with the classic, Rousseauian idea of general will. Second, a form of securing political autonomy (or a way of understanding what the shared, deliberate judgement amounts to), which I argue is the normative basis of justified secession, refers to the collective autonomy of subgroups whose evaluation is based upon the fulfilment of their associative duties. Let me account for these two points below, leading towards the normative basis of my non-alienation principle.

Recall Stilz's proposal for political autonomy: a subject reaches that political ideal as it (1) identifies with the higher purposes behind its citizenship (derived from shared political will); (2) understands how its political participation shapes the collective decision; and additionally (3) the joint venture it follows endorses basic justice and personal autonomy. And presumably,

personal autonomy can be understood as a kind of self-realisation which requires an agent to carry out actions reflecting its evaluative and moral understanding, where such understanding should manifest the agent's authentic reasoning.[1] In other words, we can take personal autonomy as a necessary condition for one's self-realisation and whereby the person is able to actualise his or her will in reality. Given this conception of personal autonomy, political autonomy can be further illuminated as follows.

Firstly, if politics and self-realisation are mutually affected, then it is reasonable to require collective decisions to reflect the general will of people who are both the subject and object of that decision. It goes without saying that we project our political vision onto policies or elect statesmen in order to actualise our conceptions of the good life. We thus carry out part of our self-understanding in terms of political participation. Such a demand corresponds to the requirement for self-realisation that it should reflect the agent's will. Yet, as pointed out in Chapter 3, a politically shared will is formed not in a way that mirrors each citizen's first-order, personal judgement, but in the second-order sense that the majority of citizens share certain common political projects, abstract values and the procedure of decision-making. While most citizens subscribe to such a general will, they recognise and identify with their roles in terms of citizenship.

Secondly, given this identification with citizenship or political participation, citizens, as in self-realisation, should understand how their participation shapes the society and what larger narrative or vision is behind the joint venture. Further, they not only internalise the role of

[1] See Stilz, (2019), pp. 105-6. For a detailed exploration of the connection between autonomy and self-realisation, see Rahel Jaegii, trans. Frederick Neuhouser and Alan E. Smith, *Alienation* (New York: Columbia University Press, 2014), pp. 32-42.

citizen but also perform political participation for its own sake, because the activity is carried out to manifest their shared political shared will. The majority of citizens actualise part of themselves in society, as they impose their will on the political institutions and anticipate the realisation of that will through policies.

Thirdly, because neither political nor personal autonomy is absolute, the fulfilment of ideals should be conditioned by balancing with other weighty values. The limitations on these two ideals can be seen below. Self-realisation requires the activity to be carried out not only with authenticity but also as a result of a practical reflective equilibrium. The former demands correspondence to what the agent recognises, while the latter prescribes self-realisation as involving a reconciliation between what one desires and how the external world conditions that desire. In other words, the articulated self or activity has never been totally subjective or objective, in the sense that there is always a concern about what external conditions are justified in prohibiting or forming intended actions. In terms of political autonomy, it goes without saying that self-realisation in politics should be confined by the boundaries of morality. We should respect basic rights, treating everyone as free and equal. Adherence to basic justice ensures the same amount of external freedom for each subject and the commitment to personal autonomy respects each subject's individuality as an independent person, able to determine and taken responsibility for their fate.

Nevertheless, there remains a concern about what constitutes the alleged higher, abstract purposes and values behind citizenship. As shown in Chapter 3, Stilz argues that shared political will can be brought about with the assistance of political institutions or political participation as long as an endogenous account of peoplehood is formed. I also appealed to

Brexit as an example to illustrate how such general will operates with respect to the diversity of society. Yet, as illustrated in Chapter 4, political autonomy should not only be pursued in terms of FSD, but also in terms of SSD. That is to say, a subgroup defined by Moore as a self-determining people is a pivotal source of certain political projects and higher, abstract values to which the members subscribe, given that their personal identity is shaped by the group identity. While some subjects are both citizens and a member of a subgroup, their contribution to the shared political will is no doubt derived from the higher values and political projects associated with the subgroup. Recall Moore's account of territorial rights: the subgroup's commitment to certain values and political projects reflects relationship-dependent goods and thus amounts to the associative duties within the group. I will illustrate in the next chapter how to understand such duties more specifically when accounting for why the right of secession should be a group right. For now, suffice it to say that the commitment to FSD and SSD or the dualism of territorial rights should lead us to prescribe the fulfilment of subgroup's associative duties to political autonomy, given that we both value each citizen's self-realisation and recognise that the constitution of the self is shaped by group identity.

Thus, successful self-realisation/personal autonomy requires the establishment of political autonomy in a society and relies on the fulfilment of a subgroup's associative duties. If SSD is not achieved (i.e. the political participation of the subgroup does not allow them to complete their associative duties, producing persistent alienation), the members do not have secure territorial rights, despite holding citizenship. Their political participation now amounts to a rubber stamp in terms of collective decision-making. To address this, political autonomy should contain a nonalienation principle, P_{na}:

> Insofar as a subgroup G (as a qualified holder of territorial rights) is subjected to the political authority of host state, G is entitled to *the fulfilment of its SSD/associative duties in a non-alienated manner*.

If this principle is violated, the subgroup in question is entitled to claim secession. I will argue for the following ideas in the rest of the chapter. First, given that most secessionist movements are embedded in deep structural injustice, this implies what Catherine Lu calls structural and existential alienation, which reveals different degrees of alienation. The resolution of such alienation refers to genuine communication, as discussed. Thus, structural alienation can be a justified cause of consensual secession entailing the first subprinciple, whereas the second subprinciple proposes that existential alienation is sufficient to justify unilateral secession. Second, I will propose these subprinciples as positive and negative readings of the main principle. This differentiation depends upon the extent of the safeguards put in place to secure the non-alienation principle. Positive protection secures the associative duties of subgroups with respect for their structural dignity, while negative protection aims to preclude the infliction of existential alienation on subgroups.

2. The first subprinciple: Safeguarding social Equality and preventing structural Alienation

Here, I shall argue for the first subprinciple, which, based upon the value that it protects, I term the structural dignity (sub)principle (henceforth, P_{sd}), which is defined as follows:

P_{sd}: Insofar as a subgroup G is subjected to the political authority of host state, it has the right to *have its structural dignity recognised by its state equally to that of other subgroups.*

I will begin by explaining how I conceive of justified consensual secession. Why not leave it to political negotiation, rather than a theoretical intervention? If secession is consensual, does this mean there is no dispute on the matter? First, I conceive justified consensual secession as a claim that requires careful deliberation by the government. This process should include, secondly, a political response, such as an official, sincere political negotiation with secessionists or an independence referendum. That means, thirdly, that a government needs to understand under what condition those strategies should be implemented. An appropriate response to a claim to consensual secession not only prevents an outbreak of unilateral secessionist feeling, but also regulates the behaviour of two sides (i.e. the government and secessionists), making it more likely that a political compromise can be reached, taking both interests into account. What autonomous scheme or political compromise fits the claim is no doubt a matter of political negotiation in each case, yet when a government should consider a claim seriously is really a theoretical question.

The argument for the first subprinciple runs as follows: given that a subgroup encounters structural alienation, in circumstances where the government is trustworthy and constitutional safeguards can be relied on, the claimant, according to the positive reading of P_{na}, is justified in proposing consensual secession for the purposes of restoring their structural dignity.

2.1. The positive reading of the non-alienation principle

The first subprinciple is what I call the positive reading of P_{na} because every subgroup should be able to fulfil their associative duties with the provision of institutional resources. The state should hold an impartial and equal attitude to the distribution of identity-related resources necessary to sustain fundamental group interests and thereby structural dignity. Violation of this activates G's right to further self-government, including consensual secession as a necessary means to compel the state to re-assess and re-negotiate G's self-determination.

How do we understand structural alienation and structural (in)dignity? According to Catherine Lu, structural alienation denotes the circumstance in which social or political structures deprive an agent of the power or capacity to achieve self-realisation in the world.[2] It can also be termed the loss of structural dignity, because the social structure fails to respect the agent's structural dignity as an autonomous person. Structural dignity is a 'fundamental prerequisite of a just social structure and an objective component of structural reconciliation.' [3] Moreover, 'an agent enjoys structural dignity when the social/political structures in which the agent is positioned empower her to participate in the making of meaning in the social world.'[4] Structural alienation and/or indignity is evident in colonisation, because colonial rule is designed to exploit the resources, both natural and human, of colonies for the sake of metropoles and empires. The structure treats the colonised merely as a means to serve the interest of colonisers. The will of the former is dominated by the latter,

[2] Catherine Lu, *Justice and Reconciliation in World Politics* (Cambridge: CUP, 2017), 200-1.
[3] *Ibid*., p.200.
[4] Ibid.

from which we know that the structure conceives of the colonised as inferior to the coloniser. There is no structural dignity under colonialism for the colonised.

Would a subgroup whose associative duties fail to be recognised by the state suffer from the same pathologies of subordination after 1960, when the UN declaration of decolonisation (Resolution 1514), was announced, and implemented by many colonisers? The answer is, as illustrated in the previous chapter, yes. There are still many subgroups living either in settler or decolonised states confronting deep structural injustice. Although there were indeed many new states born (representing the independence of colonised) in the postcolonial context, and most subgroups in those states have been given the same amount and quality of citizenship rights, they may still be outnumbered, forced to incorporate themselves into a society neither chosen nor formed by them, and considered less civilised or valuable by the ruling class. Kashmir and the Kurdish people are all cases in point. The formal decolonisation movement ceased after 1970, which implies that negotiations of the boundary-drawing of state territory have been frozen since then. If deep structural injustices have not been rectified or improved by the host states, which continue to assimilate and suppress these minorities, the structural indignity inflicting on the subgroups undermines their capacity to articulate their authentic agency. Recall the analysis in Chapter 3 and the relational account of alienation in this chapter. The fulfilment of associative duties is a necessary condition for a subgroup's collective self-determination, while such collective self-determination is constitutive of the member's agency or personal autonomy. It follows that a subgroup failing to articulate their authentic actions not only reflects an inability to fulfil their associative duties but also undermines the self-realisation of the members. Since this is a necessary

condition for the collective and individual agency, the subgroup has the right to demand institutional resources to fulfil their duties.

One may wonder how the provision of institutional resources tackles structural alienation. Reconciliation, according to Lu, 'enables the relevant agents to engage in an open-ended, meaningful, and respectful struggle for a mutually affirmed social/political order'.[5] Such a political project is essential and helpful to the alienated because, as illustrated, individuals should be provided with social conditions that protect their self-realisation. Provided that each individual has a concept of self-realisation, reconciliation should open up social orders and make them respectful enough to develop the life projects of the alienated. However, genuine communication is also required. Examining, rebuilding and fulfilling the associative duties of alienated subgroups necessitates the space for a creative, syncretistic, and pluralistic discourse between the subgroup and the host state on the terms and conditions of their self-determination. The formation of duties or collective agency can only be achieved in a non-alienated manner, respecting both the basic structure of the external world and the subgroup's self-understanding. However, because the social structure in which the subgroup is situated stigmatises their structural dignity, the host state has a duty to re-construct the social structure, in a way that is not only equal for every citizen, but also that empowers the alienated to rebuild and cultivate their self-understanding. In order to create space for genuine communication, impartial and equal distribution of identity-related resources has to be undertaken by the state (partial, unequal distribution of such resources normally precedes structural alienation). The first subprinciple therefore takes the equal recognition of a

[5] *Ibid*., p.193.

subgroup's structural dignity as the basis of the claim and fair distribution of identity-related resources as the reparatory measure, in order to establish genuine communication between state and subgroup.

Structural alienation compels political theorists to confront the inadequacy of formal recognition of citizenship rights. Alienated subgroups require more effective means to amplify their political voice. However, one may question whether we should necessarily take secession as a way to restore a subgroup's structural dignity. Three responses are given below. First, when the structural alienation of a subgroup takes place in a society, it often implies that the state is not aware of, or rather ignores, the structural injustice inflicted on the subgroup. Moreover, the majority of the society may feel that the subgroup has to resolve the alienation by themselves, because culture or group identity is a private business in which the state should not interfere. This echoes the statist inertia identified in the previous chapter, out of which a state seldom remedies alienation willingly via institutional resources. Second, the alienated should be entitled to some leverage in terms of self-government against this inertia, which surely includes consensual secession. The reason to include such a seemingly extreme measure is to raise awareness of the structural indignities suffered by the claimants. That being said, a claim to consensual secession implies that the provision of identity-related resources should be offered to the subgroup to facilitate genuine communication and remove their structural indignity; otherwise, the group is entitled to restore their structural dignity for themselves, by establishing a state of their own. This conditional implication, third, shows that structural alienation can be rectified without appealing to secession necessarily, and the fair distribution of identity-related resource can, in and of itself, compromise the independence of the subgroup. However, there is undoubtedly a serious violation of

subgroup's territorial rights by which the fundamental good (i.e. self-realisation) of the members is seriously intruded upon. Therefore, we can conclude that, besides different degrees of alienation, the reliability of the government or constitution also determines what form of secession a claimant might seek. If the state is reliable and committed to remedying the alienation, secession is not theoretically necessary. However, subgroups must be equipped with the countervailing force (namely consensual secession) necessary to tackle statist inertia effectively.

How can we verify the reliability of a government? This is a crucial yet delicate matter. Neera Chandhoke proposes that contextualising the right of secession plays a pivotal role in settling a claim to secede, because so many important factors, such as the form of government (i.e. whether it is democratic or not), the minority rights of other subgroups, and the interests of third parties, all complicate the claim.[6] Determining those issues is beyond the work of normative theorising and so demands much empirical inquiry. Likewise, whether a government is trustworthy depends on the constitution, compliance with the rule of law, sincerity in negotiation, and whether the claim is outweighed by more important moral considerations. Since structural alienation alone cannot straightforwardly prove that a government is unreliable and other (countervailing) moral considerations have to be taken into account, a subgroup suffering from structural indignity can at most compel the government to re-construct social conditions to allow genuine communication between them and the state. As the role of consensual secession is to force the government to address

[6] Neera Chandhoke, *Contested Secessions* (Oxford: Oxford University Press, 2012), 90-124.

structural alienation and undertake sincere political negotiation of self-government, I term a claim to secede derived from structural alienation to be weak.

However, it should also be noted that the above conditional implication implies certain transformative conditions, under which a violation of the promise to self-government might be transformed into a justified claim to unilateral secession if structural alienation is not addressed, but rather lingers and escalates into existential alienation. For example, (1) if promises of self-government made by the host state are repeatedly broken; (2) if such a promise is suspended or delayed without good reason; or (3) if inappropriate assimilation policies that contradict or inhibit self-government are legislated. These scenarios not only undermine the reliability of government but also sabotage the subgroup's need for self-realisation to a great extent, each of which will be accounted for in the following sections.

2.2. On the continuum from consensual to unilateral secession

Before moving on to the second subprinciple for unilateral secession, I give an account of a normative continuum from consensual to unilateral secession. This implies that the distinction between these two is not sharp, but rather a matter of degree, on which the consensual approach is justified in virtue of lesser violations of normativity, while the unilateral one relies on greater violations.

Many theorists of secession (for example Buchanan and Wellman) focus on the justification of unilateral secession. It may seem that, insofar as consensual secession is within the scope of states' political authority, this 'civilised' mode of secession does not need much theoretical

attention. Yet, such an attitude risks obscuring the whole development of secession: that is, how a claim to (justified) unilateral secession is established over time. Although consensual secession is partly justified by the consent of parent states, we still need to understand (1) what reason for claim to secede deserves the government's attention; and (2) the criteria for granting or withholding consent. These two concerns, as illustrated in the last subsection, will be explored on the premise that there is a continuum of normativity from consensual to justified unilateral secession.

If some definite grave injustice justifies unilateral secession, consensual secession can be proposed when those kinds of injustice occur but are less serious, or when some state behaviours are on the borderline of such an injustice. For instance, if a serious violation of basic human rights sufficed to justify unilateral secession, consensual secession could reasonably be proposed in response to any moderate violation of basic human rights. In other words, if unilateral secession is taken to be a remedy for grave injustice, then consensual secession might be seen as a remedy for less grave injustice, as argued by remedial right-only theorists. For primary right theorists, who advocate that right to secession is not preceded by grave injustice or any serious harm, this premise also holds. For example, Wellman argues that, out of respect for collective autonomy, any group can initiate unilateral secession provided that both states involved can sustain the requisite political functions. So, the only condition to prevent unilateral secession is when either state fails to maintain its political functions. Even if this occurs, secession could still be achieved if both sides were willing to cooperate to address the dysfunction. For example, if the seceding state struggles to obtain clean water, the two sides might negotiate an agreement according to which they both accept a duty to keep water clean, free-flowing and accessible. This reasoning for consensual

secession derives from justified unilateral secession. If unilateral secession should be granted due to respect for collective autonomy and the fulfilment of requisite political functions, consensual secession should also be given due consideration by devising a way of meeting the functional requirement. Once the settlement is found, government consent should be given. Primary right theorists also accept a normative continuum from consensual to unilateral secession.

As illustrated, both camps of theorists should accept the presumption of a normative continuum of justified secession. My principles for justified secession also concur with the thesis of a normative continuum, as it starts from the main principle rooted in persistent alienation and the fulfilment of the SSD/associative duties of subgroups. Such normativity further entails two subprinciples, depending upon different degrees of persistent alienation. Consensual secession is based upon (less harmful) persistent structural alienation, while unilateral secession is based upon more serious, long-term existential alienation.

3. The second subprinciple: Resistance to existential alienation

One of the proper remedies for persistent alienation, as I proposed in the preceding section, is a claim to consensual secession as the instrumental and yet necessary leverage to force the government to undertake fairer provision of identity-related resources, enlarge the victim's self-government and rectify their structural alienation, provided that the alienation is not too severe. Yet if alienation is not addressed, the transformative conditions will undermine the credibility of government and thus elevate the original claim to one of unilateral secession. I shall show why the claim has to be transformed, or what justifies a claim to unilateral

secession when structural alienation deteriorates. This is the negative reading of the main principle, because it pertains to greater or long-term persistent alienation, which is the foundation of the main principle. I will start with a definition of this negative reading, and then go on to further distinguish the value of non-alienation from non-domination, arguing for the former as the core normative basis of justified secession (although my principles also have the effect of non-domination). Such an argument will be illustrated with reference to the 2019 protests in Hong Kong.

3.1. The Negative Reading of the Non-Alienation Principle

Call the second (subprinciple) the principle of resistance to existential alienation (henceforth, P_{rea}), relating to justified unilateral secession and denoting a more serious violation of the non-alienation principle. It is defined as below:

> P_{rea}: Insofar as a subgroup G is subjected to the political authority of host state, G is entitled to *the right not to suffer from existential alienation*.

The right implies not only G's right to further self-government but also self-preservation. If the principle is violated, G is entitled to secure self-preservation through any means G sees fit that is consistent with general moral duties such as respect for human rights. Such means no doubt include unilateral secession. As such, there are two key issues. First, why is existential alienation tantamount to a harm to self-preservation? Second, how does existential alienation connect to the transformative conditions?

To address the first concern, let us look at the definition of existential alienation as 'an agent's anxiety and uncertainty about what constitutes authentic agency'.[7] Given that the idea of authenticity has been explained in terms of self-realisation in the first section, it further refers to 'a condition precipitated by the disruption and collapse of social and moral frames by which agents were socialised and engaged in the activity of self-realisation'.[8] Yet how or why would the agent become anxious about self-realisation? Following Kok-Chor Tan's research on a

[7] Lu (2017), 184.
[8] *Ibid*.

particular colonial experience, the problem creates an effect called double alienation, in which an agent is deficient in the identity-related resources necessary to establish a mutually just and cooperative relation with others: self-understanding and secure social conditions.[9] In other words, double or existential alienation articulates the social pathology with which an agent's self-realisation is not only disturbed and stigmatised by the social structure, but also entrenched in a loop of self-doubt or self-deprecation.

Structural indignity is likely to produce an existential crisis in areas where colonisation prevailed for long periods. Colonialism demands what Pratap Bhanu Mehta calls a deferral of recognition: 'if you don't recognise the merit that Empire preaches or are considered incapable of it, you are unworthy; if you do recognise the empire's excellence and use the colonisers' vocabulary, you are a usurper'.[10] Insofar as they have endured colonial discipline all their lives, the colonised is exposed to double alienation, being both estranged from their (authentic) agency and trapped in the dilemma:

> to assert a difference from the normative hierarchies that imperial powers created was to confirm the very thing the coloniser thought about you; [but] to assimilate to those demands and fashion yourself in accordance with them was to grant him the ultimate victory.[11]

[9] Kok-Chor Tan, "Colonialism, reparations and global justice," in *Reparations: Interdisciplinary Inquiries*, J. Miller and R. Kumar, eds. (Oxford: Oxford University Press, 2007), 283.
[10] Pratap Bhanu Mehta, "After colonialism: the impossibility of self-determination," in *Colonialism and Its Legacies*, Jacob T. Levy and Iris Marion Young, eds. (Lanham, MD: Lexington Books, 2011)
[11] *Ibid*.

Eroded by colonisation, the 'native' has either lost the traditions necessary to restore their lifestyle, or faces a society whose form is alien to them, and in which they have no appropriate role. The colonised thus refuse what they are, fall short of being what they were, and puzzle what they ought to be next. So understood, double alienation is in fact self-alienation in which the agent, by definition, lacks the necessary resources, social and mental, for successful self-articulation. Double alienation makes the agent fail to recognise its action as its own.

Is the problem of existential alienation likely to re-occur in the postcolonial world? Undoubtedly, the answer is yes. Recalled that structural alienation occurred even after the decolonisation movement in 1970s, because new states may still impose unequal social structures on the subgroups within their territories. Thus, colonialism persists in the postcolonial era, even though the coloniser is no longer foreign, but local and native. Structural alienation is by no means exclusive to the Western Colonial Era. Whenever the ruling class aligns with the 'imperial' attitude, the targeted subgroup confronts structural indignity, under which they fall into the dilemma described above, deciding either to assimilate into the majority group, or to accept the status of second-class citizens. In other words, the victim does not necessarily relate to any colonial history. What truly matters is whether the ruling reflects the form of colonisation. Moreover, many structurally alienated populations were victims of colonisation, which means that they are all facing 'internal' colonisation in the form of the wounds of 'old' colonialism, despite the decolonisation movement. The Rohingya in Myanmar, the Uyghurs in Xinjiang, the people in Hong Kong and most indigenous peoples around the world all represent this problematic social pathology. On the one hand, the social structure obstructs or interferes in what they hope to achieve; on

the other, their capacity to achieve self-recognition and understand what they value, is deteriorating.

'Aphasia' is a term I adapt from its clinical usage to describe the damage of existential alienation. A society deprives a victim of their capacity for self-realisation just like the brain damage inflicted on the sufferer of aphasia. The victim is not merely forced to be a means to another end, but also cannot explore or actualise the meaning of their existence. Self-preservation should take this damage into account because such a being is, in many ways, not human anymore. The state therefore has a duty to create a secure environment (i.e. a genuine communication) to protect its citizens against existential alienation.

3.2. Existential alienation as a precaution to prevent grave injustice

When existential alienation has already taken place, the state or government cannot be considered reliable, as this state of affairs reflects not just the state's failure to secure its territorial rights but also the long-term contempt it has for the subgroup. The alienated may consider a riot or violent protest to release the social pressure and express their anger and despair. Thus, the structural alienation of the victim has been long-ignored, and/or the host state may have attempted to resolve the problem via assimilation or antagonistic policies. That is the reason to propose the aforementioned conditions, under which a claim to consensual secession could become a claim to unilateral secession by virtue of existential alienation. To avoid the damage of existential alienation, every group subjected to state coercion should have 'the right not to suffer from existential alienation'. Such a right also reveals the foundation of the nonalienation principle: once a subgroup is subjected to a

particular state, the group shows its commitment to the FSD of the state (i.e. its political autonomy); in return, the state has a duty to protect them from existential alienation.

If the second subprinciple is violated, any claim from a subgroup to unilateral secession is then justified (provided the secession will not cause injustice to others) because their self-preservation is in danger and the subgroup has the right to remedy their existential crisis by the means they see fit. Yet controversy may arise if an intra-state autonomous arrangement seemed possible. Would we allow the claimant to exercise their own discretion or should that arrangement have priority? As illustrated, I argue that the claimant is entitled to act as they see fit, provided the claim would not inflict injustice on others. This is because, firstly, as illustrated in my dualistic account of territorial rights (and as argued by Stilz), the state has no justification other than justice to coerce its subjects. Given the claimant holds territorial rights as well, the state's prioritisation of intra-state autonomy is baseless. Second, existential alienation is empirical evidence of the state's lack of responsibility, and disdain for the moral status of the claimant. Provided that the existential alienation is a result of repeated failures to rectify structural alienation over time, it is rational for the claimant to distrust its parent state and other citizens. For, before the alienation became existential, the state had plenty of time to correct the structural flaws in society, as did other citizens. As the whole society has ignored the wrong over time, it is reasonable to question the sincerity of any suggested arrangement of intra-state autonomy put forward by the parent state. Furthermore, because mutual trust between the alienated and the host state or majority has broken down, it is reasonable to claim that prioritising intra-state autonomy creates social instability.

If existential alienation can be evidence of the state's and other citizens' ignorance, moral bias and inertia, the alienated subgroup has sufficient reason to worry that remaining as they are will lead to grave injustices such as discrimination, inadequate assimilation, or even ethnic cleansing. Violent protest may also be foreseeable, bursting out from the subgroup in a moment of frustration. I propose, then, to justify unilateral secession with the following ideas:

a) A strong claim to secede is created by a serious violation of human rights, or of the non-alienation principle (i.e. the second subprinciple is violated).
b) Persistent/Existential alienation accounts for one of Buchanan's conditions of justified unilateral secession, namely states' persistent, serious, and unprovoked violations of intrastate autonomy agreement.[12]
c) Existential alienation could be taken as a warning of imminent human rights violations. This causality provides the preventative condition of unilateral secession in addition to Buchanan's injustice account: *in order to avoid grave injustice, existential alienation is a sufficient justification for secession, provided this will not cause injustice to others*.

3.3. Non-alienation and non-domination

Thus, persistent alienation can be a sign of a government or society that has acted towards grave injustice given that existential alienation normally produces mistrust and a hotbed of potential conflict. Apart from the connection to (in)justice, the ideal also reflects non-

[12] Allen Buchanan, *Justice, Legitimacy, and Self-determination* (Oxford: Oxford University Press, 2004), pp. 351-52.

domination because, by the same token, it can be said that the state should not impose arbitrary domination on any group. However, I shall argue for non-alienation as the value that justified secession secures.

At first glance, my nonalienation principle appears to overlap with non-domination because the principle envisages the power structure of political authority being necessary to resist domination by another group. As defined by Philip Pettit, the dominating can arbitrarily interfere with the choices of the dominated, at will and with impunity.[13] Informed by studies of colonialism, my nonalienation principle prevents any institutional scheme similar to colonisation happening in the contemporary era and so requires that we reform social conditions, so that no group can impose its will on others arbitrarily. In other words, the power structure of the ruling class should recognise the ideal of non-domination alongside a commitment to genuine communication. That is to say, secondly, the value of my principle of nonalienation balances negative and positive freedoms. On the one hand, it provides a secure environment for the exercise of positive freedom; on the other, it offers something stronger than negative freedom, allowing some justified forms of interference, viz. those demanded by virtue of basic justice and respect for each subject's personal autonomy. Thirdly, since freedom as non-domination focuses on social power relations and equality, it corresponds to the ideal of social equality shared by my principle, i.e. our political projects should treat every subject as a free equal.

[13] Philip Pettit, *Republicanism* (Oxford: Oxford University Press, 1997), pp. 58-59.

However, four issues make the violation of the ideal of non-domination fall short of being a fundamental reason for justified secession, and suggest the violation of non-alienation as a better fit. Firstly, as noted by Fabian Schuppert, social equality is characterised by two forms of social relation: intersubjective, which pertains to how people treat each other (say social hierarchies between different classes) and reflexive, which refers to how a person perceives themselves (i.e. whether they have self-respect or feel inferior to others).[14] Since non-domination mainly concerns how to restrain the abuse of power amongst agents, it pays little attention to reflexive social equality. Secondly, Sharon Krause has pointed out that theories of non-domination easily dismiss unintentional social suppression (say racism or sexism) because the idea, conceptually speaking, captures mainly the capacity for arbitrary interference, meaning a 'conscious' capacity for control.[15] Recall the paradigm case in which a master holds domination over its slave. This refers to the power relation, which the master can utilise and manipulate at will. This case stresses the intentionality of the dominating, aiming to identify the potential power structure that the master is aware of, but chooses not to exercise. Nevertheless, social inequality may still take place when both sides subscribe to certain implicit social biases or discriminatory ideas, with the consequence that the dominating party and the dominated alike do not recognise the domination. For instance, a husband and his wife may share a biased conception of the role of women and so the wife's freedom is jeopardised not only by the domination of her husband, but by broader discriminatory social conventions, including conventions that she herself upholds and subscribes to. Non-domination theories usually struggle to identify the underlying causes of

[14] Fabian Schuppert, "Non-domination, non-alienation and social equality: towards a republican understanding of equality," *Critical Review of International Social and Political Philosophy* 18, No. 4, (2015): 440-455, 444-45.
[15] Sharon Krause, "Beyond non-domination: Agency, inequality and the meaning of freedom," *Philosophy and Social Criticism* 39, No. 2, (2013): 187–208.

social inequality because they need to think beyond what the dominating party can do deliberately. Thus, thirdly, the nature of social (in)equality is too complex to be captured by non-domination. The harm of social inequality can be reflexive and refers also to certain subconscious and unintentional social norms, both of which suggest that unpacking inequality often demands an intersectional approach, and that resolution should go beyond legal/political reform. In other words, non-domination theorists struggle to define arbitrary interference[16] and the complex nature of social inequality exacerbates such a difficulty. Therefore, non-domination alone is insufficient to protect social equality.

Finally, my nonalienation principle not only reflects what non-domination attempts to protect but also deepens this thought by identifying the core rationale behind territorial rights i.e. *regarding land or territory as a meaningful tool for self-realisation*. Territory is morally necessary not merely because it is an incarnation of the state, but also part of our self-realisation. According to the relational account of alienation, our selves are meant to be actualised only if they are involved in articulating what we conceive of ourselves and the external world. Such understanding of territorial rights undoubtedly concerns whether an agent can utilize the land on which they live to manifest their life projects, because our lives can only be carried out as we wish in certain places. This not only implies the land utilisation one relies on (say, nomadic or sedentary; agriculture or business), but also the mechanisms determining those lifestyles. As illustrated, an individual life project is conditioned by the

[16] Arguing for a proper definition of arbitrariness is always a difficulty in theorising non-domination as a political ideal. Simply put, the ideal may collapse into triviality without a satisfactory account because we cannot remove all factors contributing to the imbalance of power, such as differences in talent or physicality; as such, the theory has to articulate on what basis some factors constitute unbalanced power relations and yet do not violate non-domination. Since the causes of social inequality are complex and intersectional, it no doubt complicates this task.

development of the group to which one is attached, while such development depends, to a great extent, on how much institutional resource it can obtain. Thus, non-domination plays a key role in the distribution of institutional resources. Yet, this only tells half of the story of territorial rights. What is crucial here is not merely who carries out the entitlement, but *what entitlement is articulated and how*. Non-alienation is, therefore, more relevant than non-domination because it captures the dynamics of autonomy or authenticity essential for self-realisation. Territorial rights as a concept are philosophically and politically necessary: every subject is treated freely and equally, possesses sufficient capacity to form and recognise what life project they envisage and accordingly, political/legal entitlements might be created in order to support self-realisation. Non-domination plays an important role in this process and yet it is nonalienation that shapes the reason for non-domination (i.e. self-realisation). A justified claim to secede should be based upon the violation of the nonalienation principle; for the claimant suffering persistent alienation fails to articulate their life project in the state or territory alleged to be 'theirs'. For the alienated, territorial rights, in this case, would cease to play the functional role implied by their philosophical foundation, making them feel homeless in the host state. Given that the state has trapped the claimant in this situation, secession should be the way out.

To illustrate the argument, I would like to make a contrast between Hong Kong and mainland China. Scholars familiar with the multinational nature of China may agree that the majority Han people dominate Chinese society in nearly all aspects. The Chinese regime is authoritarian and fully controlled by the Chinese Communist Party. By contrast, although the political system in Hong Kong cannot be termed as fully democratic, it is more so than on the

mainland.[17] That is to say, compared to Hong Kong, the social conditions in the mainland are further from the ideal of non-domination and perhaps one may draw on this to conclude that self-determination or territorial rights are better protected in Hong Kong. However, according to recent economic data and opinion polls, most people on the mainland feel positive about their society, while the Hongkongers not only feel the least confidence about the prospects for Hong Kong over the past five years, but also have the greatest distrust in the central (Beijing) government and the Hong Kong Special Administration government.[18] It seems that the government in the mainland, although it dominates the people in many ways, governed according to the policies corresponding to their second-order values about society, whereas the Hong Kong government frustrates its citizens by failing to meet their expectations.

The rationale behind the 2019 protests (which have lasted more than four months) also cannot be exhausted by the idea of non-domination. The underlying cause of the protest reflects my argument for the nonalienation principle, which should be a criterion for self-determination or justified secession. The reasons go as follow. First, recall P_{na} proposes that a subgroup subjected to the political authority of host state is entitled to the fulfilment of its associative duties in a non-alienated manner. I shall assume that the Hong Kong people satisfies the account of self-determining people defined by a common political or group identity, a common political cooperative history and sufficient capacity to form a government.

[17] At the time of writing, Hongkongers still have not had a general election either on selecting the Chief Executive or the members of the Legislative Council. For more details, please refer to the Basic Law, Annex I and Annex II, https://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw_full_text_en.pdf.

[18] The proposition is derived from the recent CCI (consumer confidence index) and Gini coefficient in those regions. The social conditions on the mainland China are complicated: one might hear different views from people in Tibet or Xinjiang. So, it might be more precise to refer to the contrast between the Hongkonger and the ethnic Han in mainland China. See also the opinion poll of the Hong Kong people: https://www.pori.hk/charttempinternalusage2.

So what matters here is whether their fulfilment of associative duties is justified and yet confronts persistent alienation. Second, the associative duty in question refers to the claim to restore their political rights (i.e. universal suffrage for electing the Chief Executive and forming the Legislative Council, henceforth 'the double general election'); and the expectation of such a claim to the double general election is evidently legitimate because it does not violate basic justice and personal autonomy. This understanding can be seen not only in the mass media or opinion poll, but also supported by the Sino-British Joint Declaration and the Basic Law of Hong Kong, particularly Articles 45 and 68. The Declaration is an international treaty signed between the Chinese and British government in 1984, according to which Hong Kong shall enjoy a high degree of autonomy despite being subject to the sovereignty of the People Republic of China.[19] In Article 45, on the method of selecting the Chief Executive of Hong Kong, it is specified that the ultimate goal is the selection 'by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedures'.[20] Article 68, which articulates how the Legislative Council should be formed, also set out the same ultimate goal.[21]

However, thirdly, the central Beijing government has interfered in the political participation of the Hong Kong people (i.e. the pursuit of the ultimate goal) on many occasions and thereby makes the people feel strongly alienated from the government. In other words, the people of Hong Kong has experienced persistent alienation even though they exercise political rights

[19] 'Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong,' Sino-British Joint Declaration, Google, accessed 06 November 2019, https://www.cmab.gov.hk/en/issues/jd2.htm.
[20] 'The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China,' the Hong Kong basic law, Google, accessed o6 November 2019, https://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw_full_text_en.pdf.
[21] Ibid.

(such as the freedom of association and some limited rights to vote). The first attempt at interference took place in 2004 when the Standing Committee of the National People's Congress (in Beijing), which holds the highest power in legislative and judiciary, 'actively' filed the judicial interpretation on the method of selecting the Chief Executive of Hong Kong and the members in the legislative council. This is because, according to the Basic Law, the Hong Kong people would have an opportunity to transform the political system into full democracy (i.e. the double general election) after 2007. And the Hong Kong government have the duty, according to the Basic Law, to draft a political reform bill corresponding to that demand. Yet while the bill was still under negotiation in the Hong Kong government, the central government filed the constitutional interpretation prior to the legislation made by the Hong Kong government. Despite the criticism that the Congress's attempt violates the principle of judicial restraint, the Congress has further shaped the electoral system in Hong Kong by imposing many constraints on the right to universal suffrage. In 2014, the Beijing Congress furthermore denied the petition for the double general election, which might have occurred in Hong Kong in 2017. In 2016, the Congress filed another active judicial interpretation disqualifying four legislators due to their controversial behaviour against the Beijing government. Again, this interpretation was made when the Hong Kong court was still dealing the case. Such a series of violation of Hong Kong's political autonomy finally made the Umbrella Movement burst out in late 2016. Unfortunately, the Congress did not withdraw the decision and the Hong Kong government chose to side with the central government. This dissatisfaction with the government, therefore, has not been addressed properly and yet accumulated until 2019. That is, a more aggressive and larger scale of protest happened in

2019 when the Hong Kong government wanted to deliver the extradition bill[22] sabotaging the judicial autonomy of Hong Kong. This move, I believe, has further agitated the people because the infringement of Hong Kong autonomy now extends from the executive and legislative powers to the judicial one, undermining judicial independence.

Finally, we should assess whether the Hong Kong or Beijing governments have justified reasons to oppose the fulfilment of the Hongkongers' associative duty. In fact, there is little basis for such a claim. First, it is hardly credible that the claim to the double general election would have cause any violation of basic justice or personal autonomy for any individual. Second, the Congress insists that, according to the Article 43, either the Chief Executive or the Legislative Council should be 'accountable' to both the Central People's Government and the Hong Kong people. Given that the double general election in the foreseeable future has great potential to select the officials drafting policies against the central government, they argue that such interference is justified to rectify such 'partial' accountability. This argument, though based upon the law, is essentially a political or partisan consideration. For the argument not only narrows the idea of accountability down to preference accountability[23], but also resolves one bias by supporting another one, namely by electing a pro-Beijing government. The ideology of the current Hong Kong government is clearly pro-Beijing, which can be seen in how they passively react to the largest scale of protest in the last decade. The government ignores and refuses to recognize the associative duty of Hong Kong people (i.e.

[22] The bill is devised to regulate the arrangements for mutual legal assistance between Hong Kong and Taiwan/ Mainland China/Macau. It also contains a mechanism for transfers of fugitives between those areas.

[23] I define preference accountability as the kind of accountability that the representative should be responsible for the people of its constituent. This idea, however, is controversial as a constituent seldom holds unanimous preferences on all issues. Moreover, this account should not be the whole picture of the idea, because we also care or even agree that sometimes our representatives are allowed to pursue the greatest welfare of society at the expense of the benefits of some constituents.

the expectation of the double general election) constantly; and furthermore, echoes the propaganda of the Beijing government accusing the protesters of being villains and separatists. Therefore, given that the Hong Kong people continue their political participation and yet the government refuses, wrongfully, to provide sufficient institutional resource for the fulfilment of their associative duty, we should conclude that what the Hong Kong people suffer is not just domination but also persistent alienation.

I do not argue that the current social conflict can justify a claim for Hong Kong to secede. Sovereign independence is always the least popular proposal to resolve the Hong Kong issue in the opinion polls, even though recent data shows a gradual increase in support for this option. It seems, however, that the political structures currently in place in Hong Kong have not responded effectively to rapid changes in social inequality or social relations with the mainlanders. Moreover, despite the fact that Hongkongers have freedom of speech, association and demonstration, the government can simply ignore their views, as the people's political participation is limited and cannot impact upon (for example) the constitution of the legislative council or executive power. Although there are suggestions that the will of the ordinary people is influenced by political and business elites, or even the Beijing government, what initiates and prolongs the protest is a feeling of hopelessness among Hongkongers. Their limited political participation is meaningless, undermining the self-realisation of the Hong Kong majority and threatening younger Hongkongers with future long-term alienation. Below are the words of a student protester, explaining to his university chancellor why the protesters are so determined to go against the government.

During the protest, I've been asking myself: what is the warrior's bravery?[24] […] Bravery is something innate, the virtue to do anything that most people dare not do. The thing everyone can do without hesitation is not bravery. It also means overcoming fear. [A] warrior represents action, which is expressive [of what one believes]. It by no means refers to the use of force, a narrow definition so to speak. The warrior's bravery is rather to overcome the fear and put the beliefs into action.

The biggest concern about the protest is why we, the students, keep standing in the front line regardless of the violence [we experience] from the state apparatus. [We are doing this] 'out of love' is my answer. Particularly, it is the love for our neighbours and for Hong Kong, of course.

This love motivates a great number of the students and Hongkongers to overcome the fear and act on what they value. Everyone in the protest reflects the warrior's bravery. So do you, Chancellor.

This is what we call the warrior's bravery. It is neither taking sides in partisanship nor a sign of force. It is expressive of love.[25]

[24] The student asked the chancellor to think about why he and many other students have to arm themselves for the protest. He pointed out that the equipment they carry and the outfits they wear are expressions of fear.
[25] 何兆彬, "幪面學生：行出來都係勇武派！" accessed 22 August 2019, trans. myself https://medium.com/@siubun/%E5%B9%AA%E9%9D%A2%E5%AD%B8%E7%94%9F-%E8%A1%8C%E5%87%BA%E4%BE%86%E9%83%BD%E4%BF%82%E5%8B%87%E6%AD%A6%E6%B4%BE-6348f07a782f.

The protest has been triggered by love for the place and the community. This sentiment forms the selves of Hongkongers as they experience a crisis in their self-realisation.

4. Conclusion

In this chapter, I have inquired into what normative principles a claim to secede should follow, which, as pointed out in the beginning of the chapter, aims to articulate the dynamic of justified secession, as distinct from the right to secede (discussed in the next chapter). Based upon the dualistic account of territorial rights in the previous chapter, I proposed the non-alienation principle as the fundamental, because a state's FSD has to incorporate SSD without creating persistent alienation. In other words, a state derives territorial rights (including those of subgroups) when all of its subjects and subgroups can achieve political autonomy or self-realisation without persistent alienation. However, persistent alienation is still some way short of justifying secession. The inquiry hence proceeded with two strands of investigation.

First, I deepened the idea of persistent alienation, exploring what account of alienation my principle should subscribe to and the foundation of Stilz's proposal for political autonomy. The ideal of nonalienation advocates protecting our pursuit of self-realisation manifesting the importance of personal autonomy and positive freedom. As this particular conception of autonomy must be carried out in certain form of society which recognises people's right to self-realisation and so provides sufficient institutional resources for that recognition, we can reasonably assume the analogy between the conditions for personal autonomy and the ones for political autonomy. That is, political autonomy is derived because the state creates a secure social environment that allows most people to achieve self-realisation through political participation. Nevertheless, such an ideal relies upon the fulfilment of the collective autonomy of certain subgroups. I thus derive the main principle for justified secession:

Insofar as a subgroup G (as a qualified holder of territorial rights) is subjected to the political authority of a host state, G is entitled to the fulfilment of its SSD/associative duties in a non-alienated manner by the provision of institutional resources.

Second, I developed this main principle in accord with two different degrees of violation or persistent alienation. Structural alienation, the weaker form, is inflicted on a subgroup when the social structure to which it is subjected treats their group identity or associative duties with contempt. This social pathology entails a positive reading of the nonalienation principle, namely the first subprinciple for justified consensual secession aiming to protect social equality. Hence, genuine communication between the victim and the host state should address the problem, which includes a claim to consensual secession as leverage. However, if the problem worsened to the point where the transformative conditions are satisfied, structural alienation becomes existential alienation, and justifies the alienated subgroup in proposing unilateral secession, because such violation of self-realisation endangers their self-preservation. This denotes the negative reading and foundation of the nonalienation principle. Let me summarise this below.

The first subprinciple for consensual secession:

1. is defined as 'Insofar as a subgroup G is subjected to the political authority of host state, it has the right to have its structural dignity recognised by its state equally';
2. entails weak claims to secede (which aims to enlarge the authority of self-government due to the occurrence of structural alienation), because the problem of structural alienation may be solved more satisfactorily by intra-state autonomous arrangements when taking other considerations into account (e.g. national diversity in the claimed

land, the State Viability Proviso or the interests of third parties); and the problem is not caused by serious violations of basic human rights or political autonomy;

3. demands genuine communication with central government or the majority of society as the promotion of social equality; and
4. warrants a promise from the parent state to satisfy self-government, where breaking this promise might transform the weak claim into a strong claim.

The argument for a normative continuum from consensual to unilateral secession offers us the criteria of transformation from a weak to a strong claim, because long-term structural alienation has escalated to existential alienation, referring to a continuous violation of equality and freedom. The conditions of the transformation are as follows:

1. if a promise of self-government made by the host state is repeatedly broken;
2. if such a promise is suspended or delayed without good reason; and
3. if inappropriate assimilation policies are legislated, despite the claim being granted.

The second subprinciple for unilateral secession:

1. is defined as 'Insofar as a subgroup G is subjected to the political authority of host state, G is entitled to the right not to suffer from existential alienation;'
2. entails strong claim(s) to secede conditioned by incidents of grave injustice and the preventive clause: in order to avoid grave injustice, resistance to existential alienation is sufficient to justify secession, provided this will not cause injustice to others;
3. is a strong claim because, given the host state is unreliable, the problem of claimants' serious infringement of self-realisation) can only be resolved by secession; and

4. implies that in a secessionist context, serious violations of basic human rights should be taken as a consequence of serious violations of persistent alienation.

Finally, I concluded that my non-alienation principle, although it overlaps with the ideal of non-domination, is distinct from both justice and non-domination. Non-alienation is different from justice conceptually because (for example) grave injustice amounts to a violation of basic human rights, while my principles is envisaged to protect a territorial subgroup's collective autonomy because such protection secures the goods for self-realisation. Nevertheless, a serious violation of my principles should be a warning that grave injustice is imminent in a society. In addition, the ideal of non-alienation adheres to the value of non-domination, but better captures the dynamic of justified secession. My principles share the ideal of non-domination, proposing to create a social environment in which subjects should not dominate each other without just cause. However, if non-domination aims to protect social equality as my principles do, it cannot apprehend some intricate source of inequality independent from conscious controls. Non-alienation plays a better role not only because it can capture the complexity of social equality but also articulate that political territory should be a meaningful tool for self-realisation, which is the normative basis of justified secession.

Chapter 6: The Right to Secede and its Legal Implications

0. Preface

I argued in the previous chapter that we shall gain a new understanding of the right to secede once we identify the normative dynamic behind justified secession. I also showed that the difficulty of theorizing the right to secede in the early literature, apart from the methodological dispute, is due to the lack of a satisfactory account of territorial rights. Since these prerequisites for the right to secede have already been articulated, this chapter will now revisit what the right should be (i.e. primary or remedial only). After illustrating justification of the right, I shall sketch what potential legal implications such an understanding of the right implies for the practices of constitutions and international law. I will argue for the following conclusions:

(1) the right of secession should be redefined as the right of a subgroup to have an equal moral/legal standing when re-negotiating terms and conditions (for the protection of territorial rights) with the host state or any relevant agent. It thus consists in the remedial right to claim secession, the primary right to constitutional reform, and the primary right to erect a just global authority jointly with the extant, recognised states;

(2) in order to legitimate the revised right in terms of achieving its remedial and primary functions, it must be understood as a group right that satisfies both the collective and corporate accounts and corresponds to Moore's notion of a self-determining people;

(3) the right is grounded in two further fundamental and distinct rights: the right to exist, which secures basic justice; and the right to resist, based upon the protection of collective autonomy;

(4) the right is justified permissively, which means that we should treat secession as the remedy for grave injustice or persistent alienation *if and only if* it confers simultaneously the primary right to constitutional reform and to form a global authority on the right-holder; that is, domestically, the right is both remedial and primary, in that persistent alienation or grave injustice should precede a claim to secede. And yet constitutional reform can be claimed without any violation of primary rights; internationally, the right is primary because it has the same moral standing as the state in facilitating and upholding (as an international member independent from its host state) the establishment of global authority.

In other words, the revised right of secession protects the territorial rights of subgroups by entrusting their rights to a temporary, contingent, less inclusive omnilateral will (i.e. the current states) for vindicating a claim to secede, while also participating in forging a permanent, global omnilateral will for rectifying the former (i.e. the general will claimed by the extant states) whenever it appears partial or unjust. Based upon this account of the right, I shall further propose that,

(5) the morality of the right to secede forbids states from legislating anti-secession laws or codifying such clauses in constitutions, as well as providing sufficient reason to constitutionalise the right;

(6) international law should endeavour to erect a just global authority as an impartial arbiter able to settle territorial conflicts. Furthermore, it should integrate the two

pivotal principles or normative ideas into the following relation: territorial integrity can only be endorsed only if self-determination is achieved.

The chapter is divided as follows. Section 1 explains the first proposition (the redefinition of the right to secede). Section 2 illustrates the second proposition, namely the characteristics of the right-holder. In the third section, I will argue for the alleged provisional justification of the right comprised of the proposition (3) & (4). The propositions (5) & (6) will be sketched in the final section.

1. Redefining the right to secede

I shall reframe the right of secession as *the right to have an equal moral standing with the state in renegotiating terms and conditions for (the protection of) territorial rights with the host state or relevant agents.* In other words, it is the right to become a state. By moral standing, I draw upon Ori J. Herstein's account, which argues that it suffices for an agent to deflect 'directives regardless of validity (whether or not a directive succeeds in giving a directive-reason) or the normative weight of the rejected directive'.[1] The right to secede,

[1] Ori J. Herstein, "Understanding standing: permission to deflect reasons," *Philosophical Studies* 174 (2017): 3109-3132. He delineates the idea of deflection in terms of exclusionary permission. First, exclusionary permission is a kind of Razian exclusionary norm, which is a second-order norm providing second-order reasons overriding some first order reasons. The notion of first-order reasons is the initial reason for or against certain decision or action. They are often related to our personal beliefs or preferences. For instance, I like watching football matches instead of athletics. A second-order reason, nevertheless, has the effect of excluding some first-order reason when it is valid. For example, I firstly promised my best friend to watch the Olympic athletics game with him. Yet one hour later I found out there was a football match held at the same time. If I had known that information sooner, I would not have promised my friend's invitation to watch the Olympic game with him. However, due to the promise, I had to refrain myself from, perhaps, going to a pub and watch that football match. In this case, my promise to my friend plays the role of second-order reason excludes or outweighs my first-order reasoning, that is, I prefer watching football than athletics. Back to the idea of deflection, it means that one is permitted to exclude or deflect the prescription of some first-order reasons when some second-order reasons (e.g. moral standing) are shown and valid. For a detailed explanation of Razian exclusionary norm, see Joseph Raz, *Practical Reasons and Norms* (Oxford: Oxford University Press, 1990), 39-40.

therefore, endows the right-holder with moral standing in deflecting arbitrary (external) intervention in their exercise of territorial rights, even in the event that such exercise does not correspond to principles of justice. For instance, if justice requires legislation permitting gay marriage, the moral standing of a state (or claimant to secession) legitimates the state in rejecting gay marriage without interference if it decides to do so.

Redefined as such, the right entitles the right-holder to *secure their moral standing in terms of territorial rights by being freed from arbitrary interference*. It departs from the traditional considerations, asking under what condition secession (as a particular political demand) can be justified. Instead, it is the right to a moral standing that can be rightfully secured by secession, which consists of two main elements: what moral standing is at issue and how secession protects that moral standing (concerns addressed in the preceding two chapters). That is, it is the moral standing of subgroups' territorial rights that secession should protect when the principles for justified secession are violated. Moreover, in order to make the protection effective, the right is comprised of the following: (1) the remedial right to claim secession (following my principles for justified secession); (2) the primary right to constitutional reform (which includes legislation of how secession should be conducted); and (3) the primary right to jointly form a just global authority as an international member independent of the host state. That is to say, firstly, if the principles outlined in Chapter 5 are violated, a subgroup is entitled to propose secession as a remedy; secondly, subgroups have a primary claim to improve their territorial rights, including legislation referring to when and how the government should embark on negotiating secession; thirdly, given that such a negotiation with the host state should be sincere and genuine (involving an impartial third

party), a subgroup can override its host state to join a global authority as an autonomous international member. In what follows I shall provide the reasons for such a revision.

It is often emphasised that the right of secession, which points to a particular claim that may or may not relate to the ideal of self-determination, should not be conflated with the right to self-determination, which is an umbrella term that can be achieved through various means besides secession. Allen Buchanan holds such a view and stresses the distinction between consensual and unilateral secession, according to which inquiry into the right of secession should specifically investigate self-determination. According to his view, unilateral secession can be justified only if serious violations of basic human rights have happened. It is a last resort for self-preservation, not only because the host state has lost political legitimacy, but because other peaceful options have been exhausted.

However, as I pointed out in the previous chapter, such a focus is too narrow to explore the normativity of justified secession or to identify the normative continuum of justified secession. Indeed, secession is a particular means with which to achieve self-determination or liberate a victim from some grave injustice. Yet if we recognise the normative continuum, then the significance of the right should go beyond an instrument of last resort. It should instead be understood as the very reason why a given group would like to establish their community upon particular land. That is, what is the connection of a group to a particular territory given that the group anticipates building their communal life on the territory? With this in mind, the right to secede finds its roots in the protection of territorial rights and should be based upon the fundamental concerns about (1) the qualification of the rights-holder and (2) the (political) normative basis of territorial interests. Buchanan's proposal for secession reflects

status qua bias or statist bias because he fails to recognise that a state, though eligible to claim the hold of whole territory, also includes multiple territorial rights-holders within its territory. Secession should therefore not be deemed as a last resort but a way to improve territorial rights. It is no doubt an extreme way of safeguarding these rights, but it is also, under certain circumstances, the best way. A qualified claimant to secession (i.e. a qualified territorial rights-holder) should then be prescribed with the moral standing in protecting their territorial interests.

Buchanan argues for minimum justice, while the other camp (which includes, for example, Wellman and Miller) advocates collective self-determination. Informed by my dualistic account of territorial rights, both are valid: collective self-determination should be understood as a kind of justice in a fundamental sense. According to Rainer Forst, the primary question of justice is the question of power, which demands that we ascertain how the goods (to be distributed) come into the world and who decides the basis on which they are allocated and distributed. Moreover,

> each member of a context of justice has a fundamental right to justification, that is, a right to be offered appropriate reasons for the norms of justice that are supposed to hold generally; respect for this right is a universal requirement, and the moral equality expressed by it provides the foundation for farther-reaching claims to political and social justice.[2]

[2] Rainer Forst, "Justice, Democracy and the Right to Justification: Two Pictures of Justice," in *Justice, Democracy and the Right to Justification*, ed. David Owen (London: Bloomsbury Academic, 2014), 21.

Given that most modern states have an unjust genesis, a particular ruler's power to impose a social norm on the ruled always demands justification owed to the subjects concerned. In other words, justice is not just a matter of quality of ruling but also of who has the right to determine a certain social norm.

Stilz's account of territorial rights appears to satisfy both camps as it secures people's interests in basic justice and political autonomy. However, uncertainty about who has the right to the whole state territory inhabited not just by individuals but also by multiple territorial subgroups, and about why secessionists must form their state on the land they occupy, both make her conclusion that the state is the sole rights-holder untenable. Moreover, Catherine Lu and A. J. Simmons both argue cogently that wrongful subjection and historic injustice have a huge impact on the structure of injustice, and that this sometimes makes reform of territorial structure necessary. We should then recognise rights-holders other than the state, which compels us to accommodate Moore's theory and then restructure the relationship between multiple territorial rights-holders and the state. Secession is therefore envisaged as a means to protect the capacity of self-determining people to exercise their territorial rights and to create a secure social environment in which they can carry out their collective self-determination.

It is also noteworthy that the expectation that states will respect the rights of subgroups is perhaps idealistic, even though the state should, theoretically, incarnate the omnilateral will of the people. This reflects the 'relativity of Rousseau's general will', where the will might express the interests of a range of different subjects. According to Christopher Bertram, the will on which the state's behaviour should and rely is public, 'but always relative to a given

group of people, whether that group of people is some enduring institutional entity like a state or whether it is an episodic coming together of individuals on some occasion or for some purpose.'[3] On the one hand, the will of sovereignty is relatively public compared to the private reason of individuals sourced from our self-regarding interests (call it the first form, F1); on the other, it is more private than the public reason of human beings as a whole (i.e. F2), which can be seen in morality or the normative basis of international law. A particular general will regulates the subjects or society such that the people can act beyond egoism but does not sacrifice their shared interests to cater for the vast majority of people who are located outside the state territory. In addition, the will should be relatively public compared to the corporate interest of subgroups (i.e. F3) whereas the latter should also be deemed to be relatively public compared to the private interest of individuals. While taking the prosperity of group into account, the corporate interest of subgroups has to go beyond members' private interests. However, given that different groups of people intermingle with one another on the same territory, general will of the state should not be partial to certain subgroups but strive for the common interests of all people living in that territory. The above distinction or requirement for citizenship (i.e. F4 or FSD) puts the idea of general will into permanent tension with F1-F3. Firstly, the will is envisaged to overcome or suppress our selfishness but is also different to what is required by the most general, cosmopolitan reason. Second, the general will of the state should also not be an expression of the corporate interests of sub-state groups no matter they are the minority or majority of the state. Third, given that the concrete and substantive account (viz. F2 and F3) and the cosmopolitan account (viz. F1) are both rejected, it is then hard to find a way for FSD to be 'both general enough to allow people to coexist with

[3] Christopher Bertram, "Rousseau on Public Reason." In *Public Reason in Political Philosophy*, ed. Piers Norris Turner and Gerald Gaus (New York: Routledge, 2018), 249.

one another on terms of freedom, equality and non-domination, whilst being sufficiently concrete to motivate people in ways that overcome their individually selfish impulses.'[4] In order to meet such a demand, my proposed conception of the right is compelling, as it equips the minority with the ability to resist the will of the majority. It would be wildly optimistic to adopt a restrictive view of international intervention on the right to secession and hope that the state would be encouraged to promote the collective self-determination of its people, without any effective constraint on the will of the majority.

This, then, compels us to square the state power with the notions that, firstly, the exercise of state power should be justifiable to each subgroup as free and equal components of the whole; and secondly, subgroups should be able to resist the abuse of state power. I therefore prescribe a new account of the right to secede to subgroups, not only in order to improve their territorial rights, but also to establish a global authority that can tackle state inertia and encourage states to undertake genuine communication with subgroups. A more promising way of addressing secession should thereby appeal to an all-inclusive global authority to monitor state partiality.

[4] *Ibid*., 250.

2. Group right of secession

According to the dualism of territorial rights, an eligible claimant to secession, which should be a territorial rights-holder, refers to territorial subgroups within states. To use Moore's terminology, this refers to a 'self-determining people' characterised by a proper group (or political) identity, a history of political cooperation, and the capacity to form a government. Moreover, subgroups as distinct entities not only coexist with, but also constitute part of, Stilz's endogenous peoplehood (i.e. citizens as a whole). Where a subgroup experiences persistent alienation (i.e. violation of my principles for justified secession), the group is entitled to seek secession. Such an account implies that the right to secession is a group right i.e. right(s) possessed by a group qua group, rather than being held by the members therein individually. So, the term has significance only if it refers to something beyond the scope of individual rights or a bunch of individual rights. When we proclaim a certain group as entitled to specific (group) rights, we assert that (1) the members *as a whole* are entitled to these rights; (2) the rights-holders cannot be reduced to the individuals within the group (although the justification of the right may depend on individual factors, such as individual basic interests). Moreover, this is different from the idea of group-differentiated rights (a right held by an individual in virtue of the membership they obtain). For instance, I will be entitled to the right to live in my university accommodation and claim a student discount once I become a university student. Such an entitlement arising out of my membership of a group is not the kind of group right in question.

Nevertheless, given that the revised right is both remedial and primary[5], it is important to clarify how the right-holder bears the right, because each feature (the remedial and primary kind) is held in a different way. Recall in Chapter 1 the relationship between the two kinds of right: a remedial right can be exercised only if the corresponding primary right is violated. The remedial function of the right to secede thus implies the collective account that a group of individuals, without further qualifications of group identity, can jointly exercise the right whenever they confront the violation of some primary, shared interest and therefore invoke that right as the remedy. However, because the idea of a primary right means that the right can be implemented free from the violation of a particular (primary) right, the primary parts of the right to secede prescribes the sort of entitlement that it can be exercised simply in light of the holder's moral standing (distinct from any aggregation of individuals), this reflects the corporate conception of group right which demands an exposition of how group identity is maintained despite changes of membership over time.[6] In other words, I shall argue that my proposed right of secession accommodates both group right accounts, as follows: (1) the collective account is justified when referring to the joint interests in basic justice or political autonomy, that is, when the claimants hope to resist grave injustice or persistent alienation or grave injustice; (2) the corporate account is justified, as Moore's notion of self-determining people reflects a temporally extended entity grounding their territorial entitlements in the relationship-dependent goods; (3) given that the right of secession consists in a claim to the reconfiguration of political authority and a claim to a certain territory, the collective account

[5] Recall that I define the right of secession as comprised of the *remedial* right to claim secession (either consensual or unilateral), the *primary* right to constitutional reform, and the *primary* right to erect a just global authority jointly with the extant, recognised states.
[6] Peter Jones, 'Group Rights and Group Oppression' *The Journal of Political Philosophy*, 1999, 353-377.

suffices to trigger the former claim while the corporate account anchors the corresponding territorial claim.

2.1. The collective account

An account of collective rights endows a group with moral rights when the following conditions are satisfied: (1) a group of individuals holds a common interest in a public good; (2) the protection of such a public good obliges others not to interfere; and (3) the group must hold and exercise the right collectively in order to realise the public good.[7] Group members do not necessarily share some primordial common features such as culture or nationality. The pursuit of public goods is sufficient to prescribe the right for these persons as a whole.

If secession is proposed in a given geographical area, the claimants believe that their common interests in some public goods can only be secured via secession. Yet, what are those public goods? According to my principles for justified secession, public goods refer to political autonomy and basic justice (i.e. the conditions for decent human life). The collective account of the right to secede thus manifests the remedial function that a group of victims may appeal to secession in order to secure their interests in political autonomy or basic human decency.

As previously illustrated, a group of people, regardless of their group affiliation, is entitled to demand basic justice and political autonomy, creating a secure environment that permits them to achieve self-realisation. Moreover, fulfilling or safeguarding those interests requires

[7] Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), 207-09.

a collective enterprise. On the one hand, such common interests have to be fulfilled by the establishment of the state or institutions with justified public authority. On the other, serious violation of these interests (as shown in the previous chapter) calls for secession. Clearly, a single victim or a small family falls short of the threshold for creating a viable state or the duty of others not to interfere. That is, a single person's interest in human rights and political autonomy cannot impose the duty on others. They must first form a group of similar people, enabling the establishment of institutions and thus subjecting others to the duty of non-interference. Subsequently, the right of secession, as group right (as explained by the collective conception) is also justified.

A justified claim to secede therefore meets the collective conception of a group right, as it shows the inability of any single claimant to secure joint interests in political autonomy, or to oblige others not to interfere, without firstly forming a group that then bears the right. However, such a conclusion does not fully account for the whole picture of justified secession since I propose to include the primary right to constitutional reform and the establishment of global authority. It is also necessary to show why the common interest in basic human decency or political autonomy can also entail a claim to certain territory. In other words, the collective account of group right qualifies the secessionists to seek the reconfiguration of state authority, but it is less clear how this right demands the permanent reconfiguration of state territory. For example, the host state might ask the claimants to form their own state elsewhere, rather than occupying land within the state's territory. The corporate conception of group rights is then deployed to address this issue.

2.2. The corporate account

To occupy certain land within the host state as the putative territory of a seceding state over successive generations, it is necessary to attribute the corporate account of group rights to the right-holders. This conception qualifies the claimants as a group that holds a distinct moral standing, different from an aggregation of victims. The group thus has an identity that its members cannot exhaust or replace. Accordingly, others violate such a group right because they owe a correlative duty to the group and thus wrong it by failing to respect its distinct moral standing. This reflects two demands or principles for the right. First, it has to satisfy the particular demand that roots the group in a particular territory. Second, the continuity demand necessitates that the group identity must remain consistent. To meet these demands, I shall show that three characteristics of subgroups can entail a temporally-extended moral standing, grounding territorial entitlement in relationship-dependent goods.

It should be pointed out that the justification or existence of group agency in general is assumed in my arguments given that the theorisation of that idea is another demanding endeavour.[8] Group agency is possible, not because there is a metaphysically justified being living and thinking independently from the individuals of a group that dominates the action of the members; nor is it impossible because only the minds and actions of individuals are verifiable. Rather, I subscribe to List and Pettit's account, drawing on the epistemic or

[8] According to Pettit and List, there are two traditions as to the issue, one is the emergentist, the other is the eliminativist. The former proposes that 'group agents emerge as new phenomena over and above the individuals constituting them; whereas the latter argues that 'group agents can be eliminated from any serious inventory of the world; they are nothing but individual agents acting in concert'. See Christine List and Philip Pettit, *Group Agency* (Oxford: Oxford University Press, 2011), 73. See also some prominent accounts prior to List & Pettit's account, Michael E. Bratman, *Intention, Plans, and Practical Reason* (Cambridge, MA: Harvard University Press, 1987); Margaret Gilbert, 'Collective Preferences, Obligations, and Rational Choice,' *Economics and Philosophy* 17 (2001): 109-120; Raimo Tuomela, *The Importance of Us* (Stanford, CA: Stanford University Press, 1995).

methodological features of groups, which suggests that group-based facts can and should be distinguished from those that are individual-based. Some moral characteristics, say accountability or autonomy, can be attributed to the group as an agent, rather than reduced to the moral characteristics of its members.[9] Such a thesis asserts that group agency is justified 'superveniently' by the contributions of group members, just as consciousness supervenes on the coordination and operation of neurons. Moreover, the result of the members' attribution can correspond to some common interests of the members or shared understanding of the group, which manifests the idea of group autonomy or accountability.

Brexit may be a good case in point. According to the result of the referendum (based upon the principle of simple majority) in 2016, the British people decided to leave the European Union. The result, however, cannot be attributed to all the people that voted 'Leave' or all the voters; rather, Britons as a whole decided the result. Because the society as a whole chose to address the issue by referendum, it makes sense that many MPs insist on delivering Brexit as the right way of respecting the will of British people. This is because, firstly, it was not the electorate, but the MPs (including the PM, David Cameron) that proposed the referendum. Secondly, it appears that referendum was prompted by a power struggle inside the Conservative Party, rather than a direct mandate from the voters. Thirdly, neither the mechanisms of conducting the referendum nor the power relations between the referendum result and parliament are determined by the voters. For instance, in addition to the referendum, parliament had to vote to trigger Article 50, as ruled by the Supreme Court in 2017. Fourthly, the criteria that determined voters' eligibility was also not decided by the

[9] Christine List and Philip Pettit, *Group Agency* (Oxford: Oxford University Press, 2011).

voters, but the government. Many British people campaigned to include EU citizens residing in the UK, but the government decided otherwise. Who gives the government the authority over this and other such matters is not decided by a particular group, but is derived from the laws and conventions of British politics. That is to say, considerable group-based facts sourced from the members' political participation in shaping the institutions and the form of decision-making institutions, together constituted the result of the EU referendum and how that result should be delivered, by which we can and should recognise the group agency of UK society, which is distinctively different from the views of British people as individuals.

We should recognise the group agency of a certain group (outlined above) because such a group must be equipped with a set of coherent institutions in order to constitute the so-called group-based facts. In addition, neither the structure of the institutions nor the members' (political) participation alone can determine the group-based facts. The individuation of the right-holder thereby relies on the demarcation between institutions or systems of subjection: call it the institutional account. However, the three characteristics (i.e. a common group identity, a history of political cooperation and the capacity to form a government) of the right-holder evinces another account, namely the identity-based account, which is a fit more plausible in a secessionist context. First, while the institutional account supposes a shared institution to be a necessary constituent of group agency, claimants to secession often seek to found their own institutions. That is to say, a group claiming to secede often possesses a group agency that is incompatible with the existing institutions, or the institution in question caters for both them and others intermingled with them. These extant institutions are resisted by secessionists, craving institutions of their own. The institutional account cannot accommodate this. Second, common subjection normally produces different effects on

different groups of subjects, which again the institutional account fails to account for. This compels us to presuppose identity-based group agency before the establishment of institutions. For example, in Northern Ireland, Unionists have become a significant minority, responding violently against both Home Rule and integration with the Republic of Ireland since the nineteenth century. Failed assimilation policies, such as the Stolen Generations in the early twentieth century in Australia, show that the very existence of group identity pre-dates the institutions to which a group is subjected. Provided that secessionists and anti-secessionists share the same institutions, the identity-based account outweighs the institutional account with respect to the individuation of the secession right-holders.

Identity-based group agency has to be supplemented with another two conditions, as mentioned: a history of political cooperation and the capacity to form a government. As pointed out in Chapter 3, the three characteristics together constitute the 'temporally extended entity' rooted in the land they legitimately occupy. To reiterate, while a common political/group identity is taken to be a means of identification, it should also be considered as a sign of common destiny, revealing their will to live together as a self-determining community. This legitimate expectation of self-rule is further backed up by a political cooperative history (proof of their bonds of solidarity) and the capacity to form a viable government (proof of their ability to sustain and realise self-determination). The group thus connects its present self to its developmental history and the prospect of controlling its group destiny. Furthermore, individuating the right-holder by a common group identity can avoid the essentialist framing in which the group must appeal to certain substantive elements, such as being Caucasian or appreciating fish and chips, in order to keep its identity constant. Since the right-holder is specified only by investigating whether the group label (i.e. political

identity) is still upheld and whether it exemplifies the temporally-extended entity, the group can endure and accommodate various characteristic changes while retaining the same identity. As a result, a subgroup meeting the three conditions of Moore's self-determining people forms a long-lasting moral standing distinct from an aggregation of its members, which reaches the continuity demand of the corporate group right.

The final concern is how to meet the particularity demand, namely how to legitimate the territorial claim (of secessionists) against the host state. Again, I will briefly reiterate Moore's argument. While a group of individuals resides on certain land, on which they have formed a community, they form a cooperative system binding each other with social or political norms. Social relationship goods therein (particularly dependent norms, rather than generic norms such as the provision of basic justice) become an important reason for the continuity and development of the group. The fulfilment of these goods should be carried out by the members of this community, because the members share a common history of political cooperation and a commitment to maintain the group.

It may be helpful to illustrate the significance of relationship-dependent goods more concretely by introducing David Miller's argument for national self-determination, which employs the same notion (i.e. relationship-dependent goods), even though his characterisation of a nation is different from Moore's self-determining people.[10] According to Miller, a nation might desire self-determination out of three basic common interests. The first

[10] Miller defines a nation as a community that: (1) is constituted by shared beliefs and mutual commitment; (2) has an extended and shared history; (3) is active in character; (4) is connected to a particular territory; and (5) is marked off from other communities by a distinctive public culture. Such a definition overlaps with Moore's self-determining people in many ways. See David Miller, *On Nationality* (Oxford: Clarendon Press, 1995).

is a better implementation of *social justice*. An intuitive and natural sentiment in national communities asks the members to care about the group because co-nationals can directly or indirectly benefit from such care. Further, it is not implausible to assume that co-nationals by and large hold similar conceptions of social justice or more easily achieve consensus on such an issue because of their shared nationality and social norms. Nonetheless, a nation is, unlike a family in which every member is familiar with one another, a large and impersonal community. That is to say, the duty of co-nationals to follow and the duty of others not to interfere are both required once their agenda for social justice is confirmed. Assigning a state apparatus or institutional resources to a nation therefore helps them realise social justice more easily and effectively. The second interest is in being better able *to protect the national culture*. National culture is a constituent of personal identity, which should not be altered arbitrarily. For instance, a national culture is entitled to resist an assimilation policy imposed by the majority of a society. The culture should be situated within the society, providing a level playing field with other cultures. In addition, culture has a public element. Any national culture may be threatened, not only by other national cultures, but also non-cultural factors such as commercial considerations or globalisation, which can access far more capital resource than a nation can normally control. A nation then has the right to demand necessary institutional resources in order to develop and safeguard their culture. Therefore, Miller claims, 'if you care about preserving your national culture, the surest way is to place the means of safeguarding it in the hands of those who share it—your fellow-nationals.'[11] Thirdly, a nation has a joint interest in the pursuit of *collective autonomy*. Miller illustrates this by appeal to a colonial context. A colonised nation might argue for self-determination, not only

[11] Ibid.

in domestic issues, but also in demanding international status equal to a metropolitan state. 'It was not absurd for people to expect that they would have a greater sense of control over their destinies when ruled by local oligarchies than when ruled by imperial power'.[12] If we see colonisation as a violation of collective autonomy, secession can be regarded as the *pursuit* of collective autonomy. In other words, because independent statehood guarantees to a nation the greatest authority to govern and secure the public, common interests of fellow nationals, it confers the right to secede on the claimants as a group, in order to pursue collective autonomy.

I believe that Miller's argument fits with Moore's self-determining people in terms of the value of relationship-dependent goods. In other words, by virtue of social justice, collective autonomy and the importance of public culture within a self-determining people, the group is entitled to self-determine their group prospects on the land they occupy. The holders of the right to secession, qualified as a self-determining people, aim to realise a particular common life project that most of the members appreciate and/or how the project should be carried out is widely shared by the members. Non-members do not share this future commitment, and thus the group has sufficient reason to demand self-determination, and to place others under the duty of non-interference. Given that the group legitimately occupies their current living area, they are entitled to treat it as the setting in which they intend to fulfil the common life project. The particularity demand inherent in the corporate right of secession is therefore satisfied, as the right-holder grounds their territorial entitlement in their relationship-dependent goods.

[12] Ibid.

In conclusion, both the collective and corporate accounts of group rights are necessary for the right-holder to bear my revised right of secession. The remedial function of the right is delineated and fulfilled, as the collective account identifies the common interests in terms of basic justice and political autonomy, the violation of which justifies the right-holder in seeking remedy for the state's wrongdoing via reconfiguration of political authority. Yet, this is only half of the revised right to secede. While the right-holders are characterised by a common group identity, a history of political cooperation and the capacity to form a government, the group is also endowed with a moral standing distinct from that of the members when considered as individuals, and able to maintain the group identity. Such a temporally extended entity not only meets the corporate conception of group rights, but further bases its territorial claim upon its (social) relationship-dependent goods. It thus enables the right-holder to bear the primary right to constitutional reform and establishment of global authority, and of course, legitimates the territorial claim to the area they now occupy. The second half of the revised right of secession is then supplemented by the corporate account. In a nutshell, whereas the collective account is sufficient for the right-holder to seek reconfiguration of political authority as a remedy for grave injustice or persistent alienation, the corporate account is appealed to, to prescribe the primary dimension of the right for the claimant and thereby legitimate their territorial entitlement.

3. Justification for the revised right to secede

After delineating who holds the right and how the right is held, I now move on to the justification of the revised right to secession. I shall provide two kinds of justification. The first, which aims to explain why the right should blend with primary rights (instead of remedial only), draws on Jens David Ohlin's proposal that the right of self-determination should both meet the idea of the right to exist (protecting basic justice) and the right to resist (protecting) collective autonomy.[13] The second deploys Kant's idea of permissive law, that the right is justified in prescribing the remedial right to the right-holder if and only if more permissible, extensive participation in constitutional and international reform is granted.

3.1. The significance of existence and resistance

According to Ohlin, our current international legal conventions recognise the right of self-determination as comprised of the right to be free from aggression and the right to self-defence, each of which can be further reduced to two more basic rights: the right to exist and the right to resist. The remedial-right-only theorists, who draw many of their ideas from international law, normally base their accounts of justified secession upon the right to exist because firstly, the state legitimacy is justified as it has a duty to secure the basic justice of subjects; and secondly, when it fails to fulfil these duties, it violates the victims' right (to exist). These victims are thereby entitled to seek secession as a way to escape danger. The moral reasoning behind this is two-fold. First, it treats the right to exist as the primary interest, and

[13] Jens David Ohlin, "The Right to Exist and the Right to Resist," in *The Theory of Self-Determination*, ed. Fernando R. Tesón (Cambridge: Cambridge University Press, 2016), 70-93.

the right to resist as a means to manifest or protect the first right. Accordingly, for example, Buchanan ascribes the protection of basic human rights as a primary reason for secession and then conceives secession as a last resort against the violation of this bundle of rights. Second, the above consequentialist reasoning reflects the principle of proportionality, because the right of secession is justified only if other less extreme means of resistance have been exhausted. Nevertheless, I shall point out in this subsection that such a reductionist view (since the right to resist is reduced to a means of safeguarding the right to exist) is inadequate as a right of secession. Instead, the right should not only be associated with the right to exist and the right to resist, but also treat the two as distinct values, namely subsistence and dignity, or basic justice and collective autonomy. That is to say, while the remedial part of my right to secede is based upon the right to exist, the primary element of the right (i.e. the right to constitutional reform and to erect a just global authority jointly with the extant, recognised states) take the right to resist as its normative basis.

The reductionist understanding underlying the remedial theories has two flaws. First, since consequentialist reasoning relies on the idea of proportionality, it tends to embrace the 'success condition', which advocates that defence against aggression that falls short cannot be justified. Such a condition entails counter-intuitive effects, such as that we should not defend ourselves. We thus have good *pro tanto* reason to reject such reasoning. Second, it fails to acknowledge the moral rationale behind the right to resist, that is, collective autonomy, distinct and independent from the *reason* for the right to exist. If the right to resist is based on respect for collective autonomy, rather than as an instrument for the right to exist, the right to resist (and hence the right to secede) should be rooted in some primary moral interest,

by which the right-holder is justified in resisting autonomy-threatening attacks. Let me illustrate the arguments for these points in below.

Ohlin introduces Daniel Statman's proposal that 'the logic of defensive force includes a covert requirement that the defensive force is only justified if it is successful in stopping or averting the threat; otherwise the defensive force represents wasted blood'.[14] This success condition equates the use of force with efficacy: ineffectual resistance loses legitimacy, because such force produces needless harm. Moreover, being unable to defend oneself with force may promote more sincere negotiation. However, these benefits sit alongside perverse effects, some of which are morally unacceptable. First, the condition may lead to resistance being excessively violent in order to exceed the threshold, perhaps justifying the abuse of defeated enemies or prisoners of war. This concern can be neutralised if we take other values into account, such as including a provision to respect the dignity of each individual. The second flaw of the condition is more problematic. Ohlin takes rape as an example and asks us to consider how absurd it would be if the victim was forbidden to resist or attack their rapist, out of fear that such resistance might cause harm to the rapist. Moreover, such a condition could be misused, with an attacker attempting to justify their aggression by deliberately misinterpreting a lack of resistance as consent. Many totalitarian regimes justify their propaganda with such rhetoric, attempting to rationalize their suppression. If it is implausible to derive the right to resist via consequentialist reasoning from the right to exist, how can we restructure the relationship, given that both rights are fundamental to the right of secession? Ohlin proposes to place the right to resist into a deontological category, according to which

[14] *Ibid*., 87. See also Daniel Statman, "On the Success Condition for Legitimate Self-Defence," *Ethics* 118 (2008): 659-86.

resistance is justified when it protects one's autonomy, or aims to resist an attack on one's autonomy. As such, the right enjoys a moral standing equal to that of the right of existence (i.e. they are both a primary right) and we thereby should devise a distinct and independent criterion for the right to resist. His argument runs as follows.

Firstly, it is natural to respond to an unjustified attack with force. This is not merely an animal instinct, but more like an expression of dignity or moral agency, refusing to be coerced. It is a rejection of being a means to reach someone else's end. Secondly, in an act of self-defence, the agent is exercising their autonomy. They are employing moral, practical reasoning to judge what is valuable. Resistance to unjustified coercion should therefore be conceived as resistance to a violation of autonomy and the right to resist should be derived from the protection of an agent's autonomy. The value of autonomous agency is not limited to individuals but can also apply to groups (I illustrated the connection between personal autonomy and the agent's group identity in Chapter 4). Thirdly, consider the wrong of assimilation policies. The Chinese government has set up a series of 'education' camps in the southern part of Xinjiang, detaining Uyghur 'reactionaries' indefinitely and forcing them to learn Mandarin, Chinese culture (as conceived by the Chinese Communist Party), and acquiring basic skills such as room service or working on an assembly line. The government rejects criticisms of these camp as prisons, declaring them to be something like summer camps, at which Uyghurs will learn the necessary skills or knowledge to incorporate themselves into Chinese society. Once they have done so, they are permitted to leave. Setting aside the rumour that misbehaviour is punished with torture, this policy clearly violates the collective autonomy of the Uyghurs, in terms of the policy, the objectives, the selection of 'participants' (we might more accurately call them 'inmates') and the criteria for leaving, none

of which has been agreed with the Uyghurs. Because, given that the Uyghur are not immigrants but the indigenous people with its own territorial interests in Xinjiang, why do they have to be fluent in Mandarin if they can already communicate with one another, using their mother tongue? Why should they study Chinese culture or Communist Party values over their own Islamic culture and practices? Since their authority over those collective issues has been removed by the government, the increase in police forces and military budgets in the region is also attributed to the protests against and resistance to this assimilation policy.

Based upon the foregoing arguments, let me outline how my revised right of secession is derived. Firstly, provided that the right of self-determination in international law consists of the right to exist and the right to resist, the paradigmatic conception underlying the remedial theories conceives of the right to resist as a means to safeguard the sole primary right they recognise with respect to secession, namely the right to exist. However, secondly, the logical relation between such two rights, shaped by consequentialist reasoning, generates some morally unacceptable effects, such that it is reasonable to reformulate the relation between the two rights. Thirdly, following Ohlin, it is reasonable to ground the right to resist in collective autonomy. By so doing, the right to resist refers to the primary moral interest, distinct from the right to exist, retrospectively informing the right of self-determination whose normative basis should now be two fundamental 'primary' rights (the right to exist and the right to resist). Consequently, my revised right of secession, which draws on the dualistic account of territorial rights aiming to secure subgroups' basic justice and their collective autonomy (without persistent alienation), corresponds to and advocates the above two primary rights. That is, I maintain the original remedial understanding that violation of the right to exist justifies a claim to unilateral secession, while at the same time unilateral

secession is also justified if the right to resist (viz. my non-alienation principles) is seriously violated. Furthermore, since the right to resist is considered a primary right, subgroups can propose constitutional and international reform to protect their collective autonomy without prompting grave injustice. The right of secession, therefore, is justified in blending the remedial account with another primary concern, that if collective autonomy is threatened, resistance is necessary.

3.2. A permissive justification for the right

After showing why it is necessary to characterise the right of secession with the value of collective autonomy, I shall then argue that the remedial and primary rights within my revised right to secede are structured by Kant's concept of permissive law.

In line with the non-alienation principles and the dualistic account of territorial rights, the general outline of my right to secede is justified as follows. First, we examine whether a given state follows the non-alienation principles (and if not, how far the principles are violated). Were the first subprinciple P_{sd} to be violated, the victim has the right to seek consensual secession; were the second P_{rea} to be violated, a claim to unilateral secession is justified. Such measures suggest viewing the right, governed by the state as the remedial right, given that secession is the remedy for serious violation of basic justice or collective autonomy. However, secondly, the right is also primary since it advocates, despite compliance with the principles, that a subgroup is entitled to constitutional reform of their self-determination and to jointly construct a just global authority for supervise territorial conflict with the host state. Granting the remedial account of secession on the condition of the primary right to constitutional

reform and participation in shaping global order, therefore, reflects the Kantian idea of permissive law (see Chapter 4).[15] Each territorial rights-holder should ideally have the (primary) right to decide whether to form a state; and yet if rare and valuable natural resources are monopolised by a few, and if the extant state boundaries are the consequence of historical contingency, we should justify the remedial right through the primary right of (greater and better) self-government and forming a just global authority for settling territorial conflicts. The following paragraphs provide the argument for this permissive justification.

According to the dualistic account of territorial rights, subgroups within states have moral standing in territorial rights equivalent to that of their host states. It follows from the argument presented in Chapter 4 that, on the one hand, the state's entitlement to occupy and claim exclusive use of certain land can only be justified via a commitment to bringing about a just global authority; and yet on the other, statist inertia and the representative problem both demand recognition of subgroups' territorial rights by existing states, and subsequently their right to become a state. Let me briefly reiterate such an argument below.

First, the concept of state legitimacy justifies its authority over and/or coercion of a particular population within certain boundaries. State authority arises naturally from the natural duties of justice, by which the state is prescribed for the people living within its bounds. This account reflects the idea of reciprocity and Stilz aligns the idea with resistance to persistent alienation.

[15] It is worth recalling that a permissive account of territorial rights has two distinct features. First, the unit of justification is universal, which goes across space and time (namely, it includes the people of other states and the stateless, and its validity takes future generations into account). Second, the nature of justification is two-tier. In order to reach a conclusive justification, some contested entitlement can be justified provisionally and permissively if and only if all the agents in question are committed to advancing an all-inclusive principle of right. The disputed entitlements can thus be recognised currently but conditionally, and will be adjusted later on (if necessary) once the condition for a conclusive justification is obtained.

However, there should be further reciprocity between the ruling party and subgroups ruled by the host states. The state apparatus belongs to whoever seizes power, which implies partisanship. Yet partisanship originating from secession is not as common as occasions on which different political partisans can refuse to compromise their fundamental party interests. Most struggles towards secession, triggered by and rooted in deep structural injustice such that a minority's territorial interests are outweighed by those of the majority on most occasions. That is to say, the unjust genesis of a state favours certain groups, and often the partiality this creates is hardened by democracy in which such groups are numerically dominant. It is therefore necessary to safeguard the collective autonomy of subgroups, in addition to protecting citizenship rights. Recalling the relativity of general will in the first section and the statist inertia described in Chapter 4, it would be naïve to rely on states' discretion in settling the matter positively and voluntarily. This entails that any resistance born out of concern for subgroups' collective autonomy should be deemed to protect and develop their territorial interests, and by extension, group members' self-realisation. While the subjection of some subgroups accompanies deep structural injustice, reciprocity between the state and subgroups should be repaired by granting greater collective self-determination.

Second, clarifying and securing the territorial rights of subgroups concerns not just the host state or other subgroups therein, but also the states whose fundamental interests might be seriously affected (e.g. neighbouring states). This, in additional to the problem of historical illegitimacy, may make a state's accommodation of subgroups' territorial rights partial or

inconclusive. According to T. M. Scanlon, 'principles [of right] are ones that no-one, if suitably motivated, could reasonably reject';[16] moreover,

> in order to decide whether it would be wrong to do X in circumstances C, we should consider possible principles governing how one may act in such situation, and ask whether any principle that permitted one to do X in those circumstances could, for that reason, reasonably be rejected.[17]

In other words, while the justification for incorporating subgroups' territorial rights goes beyond the moral standing of the host state, justification is owed to the relevant agents, which can be determined conclusively only if a just global authority is in place to adjudicate such disputes. The Kurdish people or the Rohingya are cases in point: accommodating the territorial rights of the Kurds in Turkey may have to take the Kurds in Syria, Iran and Iraq into account. Likewise, a proper way of addressing the Rohingya humanitarian crisis requires cooperation between the Myanmar and Bangladeshi governments.

As such, given that a state's rights to the territory is commonly held by itself (or citizens as a whole) and subgroups, and given that the settlement of territorial rights influences more than these two agents, the subjugation of subgroups (to the state's authority) does not really mean submitting, but rather entrusting their territorial rights provisionally to the host state in order to achieve basic justice and political autonomy. After all, the state lacks the necessary standing in subjecting subgroups' territorial rights to its authority, without the establishment of an overarching global authority. However, one might question what role the state's

[16] T. M. Scanlon, *What We Owe to Each Other* (London: Harvard University Press, 2000), 189.
[17] *Ibid*., 195.

authority plays in terms of subgroups' territorial rights. The answer is that the state should devise provisional terms and conditions for the fulfilment of their territorial rights (including on what grounds a claim to secede should be conducted, permitted or rejected). Yet why are such terms and conditions just provisional? Here it is necessary to briefly recapitulate the typical Kantian argument for the state by appealing to property rights, although the argument is well-known by now.[18] First, we require the use of objects outside to our bodies to pursue or complete an end set by ourselves. Second, the use of certain objects entails the exclusion of others from making use of those objects, which puts others under a duty to respect our property rights. Third, the exact details of this duty cannot be determined unilaterally by my conception of the rights, but should go through a contractualist justification that no-one affected could reasonably reject. In order to address the problem of unilateral acquisition, fourthly, a state should be created, as it could formulate an omnilateral, general will, binding each citizen to determine the content of such rights. Before this, in the state of nature, we should recognise each person's unilateral acquisition provisionally and leave any dispute about rights to the general will. Meanwhile, a state acquires its territorial boundaries alongside the establishment of omnilateral will, because those closely living together, while communicating and interacting with one another, integrates their living area with its vicinity to be subject to the state authority and so form the scope of the state territory.

This Kantian account of how a state derives the boundaries of its territory is, however, oversimplified. As suggested by my dualistic account of territorial rights, a subgroup meeting Moore's criteria of self-determining people should be able to claim institutional resources in

[18] My understanding of Kant's political ideas owes much to Ripstein. See Arthur Ripstein, *Force and Freedom* (London: Harvard University Press, 2009), pp. 86-106.

order to secure their territorial rights and the host state should respect those rights by recognizing their moral standing as equivalent to that of the state. Yet, in the paradigmatic Kantian argument just outlined, subgroups' territorial rights or boundaries of (the traditional, prior to being incorporated into the extant states') territory are dissolved or forcibly incorporate into the extant states' territories. In other words, the argument neglects to account for a situation in which the individuals coerced into the state authority may have already formed their traditional territory, which determined their conception of property rights (no matter how primitive) among themselves. Such a dismissal undermines the Kantian argument because, although the principle of vicinity is justified in coercing stateless peoples into living under the subjection of state authority, recognising their entitlement to (traditional) territory should precede the recognition of their rights to property. It is also important to recall that some subgroups were conquered, which entailed the destruction of their states and other egregious injustices. Even though it is necessary to coerce persons in the same circumstance into obeying an omnilateral will (i.e. the state) to address unilateral acquisition, it is equally crucial, prior to the establishment of a new state, to recognise and respect any previously established (quasi-) general will. If a person's property rights in the state of nature ought to be deemed provisionally justified before the creation of the state, the subgroups' territorial rights should likewise gain provisional recognition by the host states before a just global authority endowed with a global omnilateral will can reformulate or confirm such rights. Before the new, global will is formed, the state should firstly recognise that its territorial rights are partly constituted by the territorial rights of subgroups and subsequently restore these rights by revisiting and renegotiating the terms and conditions of their collective self-determination.

The revisited conditions of territorial rights, therefore, are provisional or inconclusive; for the relativity of general will (mentioned in the section 1), the dualistic account of territorial rights, the statist inertia and the interests of third parties in territorial reform all show that the extant host states fall short of forming a full-blown omnilateral will to settle the issue with their subgroups conclusively. Two scenarios may illustrate this problem. First, a subgroup (though not yet formed into a Weberian modern state) may be coerced to incorporate their living area into the existing host state with unjustified force (e.g. Native Americans). Second, a subgroup may forge its distinct group identity in the face of a host state adopting a discriminatory policy towards the group (e.g. Western colonialism).

Consequently, my revised right of secession, which derives from the dualism of territorial rights, is justified on the grounds that subgroups cannot claim to secede as they wish, but follow my remedial account (i.e. the remedy for grave injustice or persistent alienation) if and only if the primary rights to greater collective self-determination are granted. The reason for this permissive account is to achieve real reciprocity between states and subgroups without causing political chaos. An over-permissive account of secession may easily push the world into endless acts of secession. Empirically, reciprocity is undermined by deep structural injustices, statist inertia and the relativity of general will. Conceptually, the state lacks the conclusive moral standing needed to settle a secessionist conflict in relation to a third party or restore subgroups' territorial entitlements conclusively. The redefined right of secession therefore provides the primary right to constitutional and international reform in order to encourage all relevant agents to resolve issues via real reciprocity, namely all-inclusive principles of right.

4. Conclusion and the legal implications

In this chapter, I proposed a new account of the right to secede and illustrated how it is justified. The right is redefined as the right to equal moral/legal standing in re-negotiating terms and conditions for the protection of territorial rights with the host state or any relevant agent; and is comprised of the remedial right to claim secession, the primary right to constitutional reform, and the primary right to erect a just global authority jointly with extant, recognised states. Simply put, it is the right to form a state: the right-holder is entitled to the territorial rights as the precondition for forming a state. However, due to historical contingencies, those subgroups are incorporated into their extant host states, meaning that (1) if the host states protect their territorial rights by realising their political autonomy, the subgroups in question are forbidden to secede; and yet (2) the right still entitles them to claim constitutional reform to enhance their internal self-determination and to be involved in the establishment of a global authority as an independent international legal entity; (3) where the states fail to secure their territorial rights (that is, the subgroups suffer from persistent alienation), they are entitled to propose secession in accordance with my principles for justified secession illustrated in the previous chapter.

I firstly argued that the right should be a group right, accounting for both the collective and corporate accounts. Given the remedial dimension of my revised right to secede, the right must be held collectively by a group of individuals confronting grave injustice or persistent alienation. This collective account indicates that the right is held whenever the joint interest of the group in a decent human life is violated. My principles for justified secession reflect how such common suffering or trauma entitles people to pursue sovereign independence.

However, the collective account is only sufficient for the claimant to propose the reconfiguration of political authority, which is merely half of secession. For the other half (the reconfiguration of territory), and also to hold the primary parts of the right (i.e. the right to constitutional reform and the right to establish a global authority in collaboration with current, recognised states), the corporate account is necessary. Based upon the dualism of territorial rights, the group must be a qualified territorial rights-holder whose members share a common political identity and history, and also possess the ability to form a government. These three conditions can produce relationship-dependent goods, which forge a self-determining people holding a constant group identity, who ground their claim of secession in a certain territory because they are entitled to fulfil the goods via the support of institutional resources.

Finally, I provided two justifications of the right. The first approach accounts for why the right contains both remedial and primary incidents. This is because secession manifests both the right to exist and the right to resist, corresponding to two distinct, mutually irreducible values: basic justice and collective autonomy. That is to say, given that the right to exist falls short of exhausting the reason for resistance, secession should be recognised as a means of protecting the claimant's existence and collective autonomy. Justified secession then has two distinct normativities. On the one hand, it follows the understanding of the remedial-only theory, which conceives the activity as a remedy for the crisis of existence. On the other, it aligns with the value of collective autonomy that the right-holder is entitled to resist or remove a threat to its autonomous agency. This second route has remedial and primary perspectives. Shown by my second subprinciple, unilateral secession should be justified as a remedy to existential alienation because such a serious violation of collective autonomy pushes the victim to the

brink of grave injustice. Yet it also creates the conditions for consensual secession, the right to constitutional reform, and the right to join the construction of a global authority, all of which are constituent parts of the right (to secede) envisaged to safeguard the collective autonomy of subgroups.

The second approach justified the internal logic between the remedial and primary incidents of the right. Namely, the remedial account of unilateral secession is justified if and only if the extant host states are committed to forming a global authority jointly with the subgroups and recognising the territorial trusteeship with the subgroups. Such a permissive justification reflects two important reasons for my revised right to secede. Firstly, it acknowledges that the territorial rights held by the current states are not justified conclusively. This means that holding these rights is disputable even though the state can provide rightful occupancy, basic justice to subjects and secure their political autonomy. That is, there is a gap: we cherish the state's achievement in protecting those three fundamental interests, so we have good reason to accept the jurisdictional authority over a particular population and territory claimed by the state; yet we understand that this falls short of a conclusive justification. To fill the gap, secondly, we should respect the territorial rights of a state that protects these three fundamental interests, on the premise that each of them is willing to be subject to a common/global rightful condition making their hold of the rights conclusive. In a secessionist context, this means a state is justified in prohibiting a claim to unilateral secession (not originating from serious violation of basic justice or collective autonomy), provided it is dedicated to creating social conditions impartial and equal for any claimant to secession by conferring the primary right to constitutional reform, and to jointly erect a global authority.

This is because first, the subgroup is entitled to negotiate with the host state on a level playing-field; second, secession goes beyond the interests of the seceding and seceded state.

In closing this chapter, I shall consider some noteworthy legal implications that are derived from my right of secession, despite the fact that my whole enquiry is based upon pre-institutional moral reasoning. The impact on current international law is twofold. First, my proposal reflects the urgent need to establish a common, shared, just global authority with effective, binding powers to address territorial conflict, for the problems of secession are normally not limited to the relevant government and secessionists. Building up such an authority is onerous, demanding thorough and careful endeavour. Yet my proposal has shown that each territorial rights-holder (i.e. the extant states and their subgroups) has the duty to remove the current, semi-state-of-nature international relations and to be coerced into a commonly-shared rightful condition. The requirement for such practical authority is mandatory not because the alleged state-oriented international order should be overturned, but because that structure has to be set on a solid normative basis. In other words, if we insist on or believe in the current form of international law, we have to support our state system (viz. the state's territorial sovereignty) on justified moral grounds. Second, my account of secession reconciles the potential tension between the principle of territorial integrity and the principle of self-determination by advocating that the former can be upheld only if the latter is secure.[19] In international law, the principle of self-determination claims that 'all peoples have the right of self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'[20]

[19] For a similar view, please see Abdelhamid El. Ouali, 'Territorial Integrity: Rethinking the Territorial Sovereign Right of the Existence of the States,' *Geopolitics*, 11, (2006): 630-50.
[20] 'Article I of the UN Covenant on Civil and Political Rights' UN charter Civil and Political Rights, google, accessed

However, the rival, territorial integrity principle is also endorsed by every state to secure respect for their holding of territory and thus the stability of global order. What should the law say to those peoples who do not recognise their host states as their own, or as a place in which they can freely pursue their economic, social and cultural development? My answer is that a state's territorial sovereignty or claim to territorial integrity is justified only if it secures occupancy rights, basic justice and self-determination within the territory, and has committed to establishing a just global authority. That being said, the principle of territorial integrity should be considered the fruit of compliance with the self-determination principle. Where a state fails to uphold self-determination, its claim to territorial integrity should be questioned under international law. Secession can therefore be justified within such a scenario and demand the protection or intervention of international law.

What about the constitutionality of secession? I believe the most tenable prescription for constitutions is that any anti-secession legislation is morally unjustified. Criminalising secessionists has no moral basis, because such legislation clearly fails to respect people's entitlement to propose secession as a means to protect their subsistence or collective autonomy. The state's right to forbid the dismemberment of the territory, though justified, is not absolute but limited to the circumstances in which the state has already successfully secured people's right to occupancy, basic justice, and collective self-determination. One may ask whether a state can issue a *qualified* anti-secession law that articulates that secession is banned except when the principles are violated. To this I would still insist that such qualified legislation is morally unjustified because it is inconsistent with my central position on

12 November 2019, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

territorial rights, whose justification cannot be deemed conclusive until all rights-holders are subject to a common rightful condition, namely a just global authority. An anti-secession law, regardless of what qualification it subscribes to, should be regarded as unilateralism claiming to have 'conclusive authority' over the acquisition of and settlement on certain land, which contradicts the permissive account of territorial rights.

On whether constitutions should recognise a right to secede, my account of the right and the relevant principles tend to support constitutionalising the right, despite the counterargument that doing so would undermine the commitment of each subgroup to deliberative democracy, reciprocity and the tolerance of diversity. Since I advocate that the right of secession includes the primary right to constitutional reform and also that consensual secession should be permitted as effective leverage to promote claimants' structural dignity, legal institutions may devise a mechanism specifying what constitutional reforms the claimant can propose and how to adjudicate and evaluate the violation of their structural dignity. It is reasonable to hold that such a legal scheme, while protecting the moral interests of the claimant, can also regulate secession, or any proposal for constitutional reform in a reasonable, predictable and peaceful manner, because, prior to taking action, either the government or the claimant understands how to address the relevant issues through a clear procedure, or by appeal to a neutral, impartial arbiter. This may offset many perverse consequences centred around secession.[21] Nevertheless, it is also worth admitting that the argument above is valid provided that society can provide a reliable and trustworthy legal system, and also that the claimant acts in good faith and does not abuse the right. According to Cass Sunstein, the use of

[21] For a more detailed argument for the point, please see Daniel Weinstock, 'Constitutionalising the Right to Secede,' *The Journal of Political Philosophy*, volume 9, no. 2, (2001): 182-203, pp. 186-89.

constitutionalism, or the reasoning behind what right ought to be recognised by constitutions, should manifest the precommitment strategy, by which the right constitutionalised is envisaged to be the consensus or precondition for helping bring about a common life project chosen by the people or facilitating social coordination.[22] In other words, constitutions should be deemed as the basic structure of how citizens run a society. Yet, while a right to secede is constitutionalised, the willingness or effort to take others' interests into account may decrease, since any group of people can cease to co-operate if they find acting upon their self (group)-interest can benefit them more than staying in the host state. For instance, a subgroup may not discuss public issues sincerely, but rather take advantage of their vote on the issues in exchange of the implementation of (the right to) secession. Such consequences not only sabotage deliberative democracy, but also undermine social cooperation by encouraging devious, strategic behaviour. While we should recognise this counterargument against constitutionalising the right of secession, however, we should also understand that the argument for the right originates from the precommitment strategy, as it holds a reasonable belief in eliminating social conflict through the regulation of secession, or the provision of dispute settlement. It thus becomes a matter of interpretation and reflects how to assess the potential consequences of constitutionalising the right, which, as pointed out in Chapter 2, is a context-sensitive matter requiring massive support from empirical study. Therefore, I conclude that my account of secession provides only sufficient reason for constitutionalising the right, and the determination of such a policy depends upon the social conditions of society.

[22] Cass R. Sunstein, 'Constitutionalism and Secession,' *The University of Chicago Law Review*, 58, (1991): 633-70.

Conclusion

This dissertation has proposed and attempted to justify a particular account of the right to secede. Although I have also specified some legal implications such as constitutionalising the right, the establishment of a just global authority or the reform of current practices concerning the principle of territorial integrity, I leave a question open about whether the relevant institutions should translate them into policy straight away. This is because, as argued in Chapter 2, I concur with the necessity and benefit of pre-institutional moral reasoning in theorising a proper account of justified secession, which means that I also respect the sovereignty of institutions; that is, any political reform should also be prudent and sensitive to the social and political contexts to which it is envisaged to apply. However, this by no means implies that my account of justified secession or the right is, in Jeremy Bentham's words, 'nonsense upon stilts'. Instead, it identifies what significant moral values would be enhanced if the rights and principles for secession I advocate were to be followed, and, alternatively, what moral loss would occur if the proposals were to be dismissed or rejected.

While the remedial right to claim secession, the primary right to constitutional reform, and the primary right to erect a just global authority jointly with extant, recognised states, are all conferred on a qualified claimant to secession (i.e. a self-determining people), not only can the state and sub-state groups safeguard their territorial rights, but subgroups can also tackle statist inertia in improving internal self-determination and help the state to get closer to the ideal of a general will. This is the upshot of the investigation in Chapters 4-6. Of course, a just global authority should be established and appealed to in order to implement such an ideal.

This is not just because, practically speaking, an impartial third-party is helpful to adjudicate a territorial conflict between the state and its subgroup, but also because, theoretically, the state lacks the conclusive moral standing needed to settle a secessionist conflict in relation to a third party or restore subgroups' territorial entitlements conclusively. Furthermore, given that sub-state groups' collective autonomy and basic justice are both protected and deemed to be two distinct values, the state can legitimate its right to forbid secession in order to secure the regional peace and territorial interests of other citizens. In particular, such benefits can be obtained when a more nuanced distinction between justified consensual and justified unilateral secession is articulated in accordance with my principles for secession as outlined in Chapter 5. Following the principles promotes not only group autonomy, but also personal autonomy, because it helps create the social, political environment that secures people's fundamental goods for self-realisation.

Consider what moral loss would take place if my proposals were rejected. First, the state would fail to secure either basic justice, rights of occupancy, or collective self-determination within its territory. More specifically, the state's claim to territorial integrity would no longer be upheld, given that its territorial rights over its claimed lands were undermined. This would, no doubt, initiate great political disorder in society, providing some self-determining peoples with sufficient reason to contest the moral or political entitlements of the state to their communal area. Suppose that the state confronted such a problem because it had imposed persistent alienation on a certain subgroup. My principles for secession then show that the subgroup would initially encounter structural indignity and eventually suffer from existential alienation if the violation continued. Moreover, such an existential crisis would push the society to the edge of grave injustice, because, given that normal political participation could

not adequately address their concerns about political autonomy, the alienated group would attempt to restore their moral agency through violence; and in retaliation, the state would undertake more egregious abuses of power to suppress this violence. Further, this unrest is likely to be contagious, spreading to other subgroups or subunits of the state that might want to claim secession in order to secure social order in their communities, or some neighbouring states/superpowers might take advantage of this chaos to initiate annexation, or some other intervention. Although at the time of writing the situation in Hong Kong has not yet deteriorated into widespread violence and there have only been a few deaths, it is clear that the Chinese government has consistently ignored the political autonomy of the Hongkongers, creating feelings of persistent alienation and eventually triggering violence between government and protesters. Further, precisely because a global political authority is not in place, able to intervene and coerce both sides to follow principles of right, no effective international intervention has taken place and we are watching might-is-right play itself out, not only in Hong Kong but also in the international community. Most international members submit to the superpower, China, and choose to be silent on the matter.

In conclusion, I hope I have argued convincingly that (1) the current boundaries of (state) territory, though a result of historical contingency, can be morally justified if my dualistic account of territorial rights is followed. This account also entails that (2) qualified claimants to secession are entitled to the same moral standing as the host states in securing their territorial interests. However, (3) provided that the account is based upon the permissive law justification, both agents (secessionists and states) should constrain their rights to propose or prohibit secession and commit themselves to erecting a just global political authority for settling disputes over secession conclusively and peacefully.

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